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CLAIMS OR DEMANDS AGAINST PURCHASERS OF REAL ESTATE IN OHIO—TAX FORECLOSURE AND FORFEITURE SALES—ANY IRREGULARITY, INFORMALITY OR OMISSION RELATIVE TO FORECLOSURE OR FORFEITURE—SECTION 5762-1 G. C. OPERATES AS STATUTE OF LIMITATION—FROM EFFECTIVE DATE OF GENERAL CODE OF OHIO, FEBRUARY 15, 1910.

SYLLABUS:

Section 5762-1 of the General Code of Ohio, operates as a statute of limitation covering all claims or demands against the purchasers of real estate in Ohio at tax foreclosure and forfeiture sales, for any irregularity, informality or omission in the proceedings relative to such foreclosure or forfeiture from the effective date of the General Code of Ohio, February 15, 1910.

Columbus, Ohio, September 1, 1944

Hon. Ray Bradford, Prosecuting Attorney
Batavia, Ohio

Dear Sir:

This will acknowledge receipt of your letter dated August 16, 1944, which letter reads as follows:

“I would like to have your opinion as to whether or not Section 5762-1 of the General Code of Ohio, which became effective August 11, 1943, validates all tax sales made prior to the effective date of the act, whether made under the provisions of Revised Statutes 2864 to 2915, inclusive, or under the provisions of General Code 5704 to 5773, inclusive, or whether the effect of the act is limited to Sections 5704 to 5773, inclusive, of the General Code.”

The section above referred to reads as follows:

“In all cases wherein real property in this state is or has been sold under and by virtue of the provisions of chapter 14 or 15 (G. C. Secs. 5704 to 5773) of this title, no action shall be commenced nor shall any defense be set up to question the validity of the title of the purchasers at such sale for any irreg-

ularity, informality or omission in the proceedings relative to the foreclosure or forfeiture unless such action be commenced or defense set up within one year after the deed to such property is filed for record or one year after the effective date of this act, whichever is longer.”

This is a statute of limitation, the purpose of which is to put at rest questions of irregularity, informality or omission in proceedings covering the sale of lands under the foreclosure and forfeiture laws of Ohio. Over a long period much doubt has been felt and expressed concerning the validity of titles passed by and through these sales. Through House Bill 260 (120 O. L.) the Legislature made certain well defined changes in this field of law, with special emphasis on land forfeiture and its sale as forfeited land, and as part of this enactment sought to repose such sales of former times.

The proper interpretation of this statute requires a full examination of the same, employing well known rules of interpretation of statutes.

It has been held many times by the courts of Ohio that a statute of limitation is remedial. In the case of *Townsend v. Eichelberger*, 51 O. S. 213, 216, the court said:

“It is no longer the habit of courts to view with disfavor the plea of the statute of limitations. *Being statutes of repose, designed to secure the peace of society and protect the individual from being prosecuted upon stale claims, they are to be construed in the spirit of their enactment.*”

(Emphasis added.)

The Supreme Court of the United States (Mr. Justice Swayne delivering the opinion) in the case of *Wood v. Carpenter*, 101 U. S. 135; 25 L. Ed. 807, said:

“Statutes of limitation are vital to the welfare of society and are favored in law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary.”

The courts of Ohio have consistently held that remedial statutes

should be liberally construed. In the case of *State, ex rel. Maher v. Baker*, 88 O. S. 165, the court held that "remedial statutes should be liberally construed so as to furnish all the remedy and accomplish all the purposes intended by the statutes".

In approaching the interpretation of this statute, the Pole Star is the intent of the Legislature. The language employed seems clear, and where such is the case words must be taken to have their ordinary meaning.

The Legislature used the following language:

*"In all cases wherein real property in this state is or has been sold under and by virtue of the provisions of chapter 14 or 15 of this title, * * *."*

(Emphasis added.)

And since chapter 14 applies to delinquent lands and chapter 15 to forfeited lands, it forces the conclusion that the Legislature intended this statute to operate not only after its effective date but also on all such sales as have been made under these chapters. However, it can not be made to extend back into the revised statutes. These subjects were then identified as follows: Delinquent lands, Chapter 7, Title 13, and Forfeited lands, Chapter 8, Title 13. *Bates Annotated Ohio Statutes 1906*, Vol. I, pp. 601 to 616.

It therefore follows that the statute covers all sales of these classes, i. e., forfeiture and foreclosure, made since the General Code of Ohio came into effect. In the case of *Enger v. King*, 9 O. App. 417, the Court of Appeals of Cuyahoga County said "The General Code has been the law of Ohio since 1910".

An examination of the General Code of Ohio will disclose that the exact effective date was February 15, 1910, the date it was signed by the Governor of Ohio. (Vol. III General Code of Ohio (1910) p. 2982.)

The one remaining question to be answered is this: Does such an act of the Legislature violate any constitutional inhibition? The Supreme Court of Ohio in the case of *Smith v. The New York Central Railroad Company*, 122 O. S. 45, 48-49, said:

"Except where constitutional provisions expressly forbid, the

Legislature has power to make, amend, and repeal laws relating to the remedy, and make the same applicable, not only to existing causes of action, in which suits have not been instituted, but even in pending suits. Section 28 of Article II of the Ohio Constitution denies to the General Assembly the power to pass retroactive laws. It has, however, been decided in numerous cases that retroactive laws refer to those which create and define substantive rights, and which either give rise to, or take away, the right to sue or to defend actions at law. It has been further declared at numerous times that a statute which is remedial in its operation on rights, obligations, duties, and interests already existing is not within the mischiefs against which that clause of the Constitution was intended to safeguard, and the remedial statutes do not even come within a just construction of its terms."

The court further went on to say:

"* * * there is no constitutional inhibition in the state of Ohio against the enactment of laws relating to the remedy, and against making them applicable to pending actions and existing causes of action. This gives rise to the further question whether a cause of action existing at the time of the amendment of a remedial statute is a vested right. If it is such vested right, it could not, in any event, be taken away altogether. On the theory that a right to sue once existing becomes a vested right, and cannot be taken away altogether, it does not conclusively follow that the time within which the right may be asserted and maintained may not be limited to a shorter period than that which prevailed at the time the right arose, provided such limitation still leaves the claimant a reasonable time within which to enforce the right."

This case carries particular force since it construed a statute of limitation on personal injuries, reducing the period within which actions must be brought from four years to two years.

Some question might be raised as to whether this statute has the effect of opening up for one year those questions that have been put to rest by the general statute of limitations.

It may be said as a broad general rule that when an action is barred by the statute of limitations the Legislature can not pass a statute and revive it. It has not the power. *McClurg v. Cole*, 8 O. Dec. Rep. 42.

In the face of the foregoing authority and specifically answering your question, it is my opinion that Section 5762-1 of the General Code of Ohio, operates as a statute of limitation covering all claims or demands against

the purchasers of real estate in Ohio at tax foreclosure and forfeiture sales, for any irregularity, informality or omission in the proceedings relative to such foreclosure or forfeiture from the effective date of the General Code of Ohio.

Respectfully,

THOMAS J. HERBERT

Attorney General