

3922

LAND ERRONEOUSLY LISTED AND ASSESSED—NO BUILDING ON PARCEL—PURCHASER AT FORFEITED LAND SALE MAY BE REFUNDED THE DIFFERENCE BETWEEN SUM COUNTY AUDITOR SHOULD HAVE WITHHELD FROM PURCHASE PRICE HAD VALUATION BEEN TRUE AND SUM ACTUALLY WITHHELD FROM PROCEEDS OF FORFEITED LAND SALE.

SYLLABUS:

When a parcel of land has been erroneously listed and assessed as having thereon a building of a certain value, when in fact there is and has been no building on the parcel, one who purchases that parcel at a forfeited land sale may lawfully be refunded the difference, if any, between the sum that the county auditor should have withheld from the purchase price had the parcel been properly valued and assessed, and the sum actually withheld by him from the proceeds of the forfeited land sale.

Columbus, Ohio, October 20, 1948

Hon. Ray Bradford, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

I have before me your request for my opinion, which request is as follows:

"On February 27, 1945, a person in our County purchased a certain lot at a forfeited land sale in the Village of New Richmond paying the sum of \$600.00 for said lot. The advertisement for the sale of said lot stated that a building appraised at \$920.00 was situated thereon, and the 1931 appraisal of real estate situated in Clermont County, Ohio, refers to said lot as having situated thereon a building valued at \$1,000.00.

"The purchaser of said lot claims that by reason of said advertisement, she paid the sum of \$600.00 for said lot, because she thought there was a building located thereon, and in 1948 the said purchaser of the lot learned that the building was not on her lot, but was on an adjoining lot, and stated that had she known there was no building on the lot that she purchased, she would not have bid over \$100.00 for the said lot.

"Both the Auditor's duplicate and the Treasurer's record corresponded with the assessed value of the real estate as set out in the advertisement, while in reality no building was on the land. The purchaser of the lot has petitioned the Board of County Commissioners of Clermont County to reimburse her in the amount of \$500.00, being the sum which the purchaser considers as being paid in excess of the true value of the lot purchased by her.

"I would like to have your opinion whether this claim should be allowed and payment made to the purchaser of said lot in the sum of \$500.00 from a surplus in the fund known as the Forfeited Land Sale Fund."

The question presented in your request is similar to the one which I recently considered in my Opinion No. 3782, rendered September 20, 1948. In the situation presented there land had been carried on the tax duplicate at a figure in excess of its actual value, due to a failure on the part of the auditor to perform a duty enjoined upon him by statute. I held that the purchaser of this land at a forfeited land sale was entitled to a refund from the county of the money which had accrued to it as a result of the auditor's failure to act. The exact holding, as set out in the second branch of the syllabus, is as follows:

"2. When an easement over lands has been acquired by the state for highway purposes and a highway has been constructed, and the county auditor has failed to reduce the taxable valuation of the remaining servient estate in accordance with Section 5561, General Code, and said servient estate has been assessed at the original valuation of the entire tract, one who purchases the servient estate at a forfeited land sale may lawfully be refunded the difference, if any, between the sum that would have accrued

to the county had said servient estate been properly valued and assessed, and the sum actually retained by the county from the proceeds of the forfeited land sale.”

This conclusion was based on the proposition that the county had received money to which it was not entitled through the actions of one of its officers, and that the county had the power to meet this moral obligation.

It will be noted from the syllabus quoted above that the amount of the refund, if any, to which the purchaser was entitled was the difference between that amount which the county actually received and the amount which it was entitled to receive from the forfeited land sale. What are those two amounts in the case which you have presented?

It should be remembered at the outset that a problem exists here because of a mistake made by the auditor. He listed a lot as having a building upon it, when in fact there was none. It can be assumed that he valued and assessed the land in accordance with this erroneous listing. So for a number of years taxes have been accumulating, both on the auditor's list and on the treasurer's duplicate, which taxes were based on an erroneous valuation. The amount of those taxes is not set out in your request, but they are the taxes which became delinquent and which caused the forfeiture of the land in question.

Even if the auditor had not made the mistake referred to above, the value of the land in question without the building would have been listed on the auditor's tax list and would have been subject to taxation. So it is clear that in any event the county is entitled to the full amount of the taxes, assessments, penalties, and interest which would have accumulated against this land properly valued. And if the amount of those taxes equals or exceeds the \$600 paid by the purchaser, she is entitled to no refund.

If, however, the county actually retained from the proceeds of the forfeited land sale an amount in excess of the delinquent taxes assessable against the land listed at its proper valuation, the excess represents money which improperly accrued to the county through a mistake of one of its officers. It is my opinion, based on the reasoning set out in my Opinion No. 3782, referred to above, that this excess, if any, properly can be refunded by the auditor, provided a claim is presented to the commissioners and allowed by them.

Your request does not state whether, after deducting the full amount of the delinquent taxes assessed against the land, there was any excess paid over to the former owner. As was pointed out in my former opinion the disposition of that excess, if any, is governed by statute, and this opinion deals only with a possible refund from the amount actually withheld by the county.

The specific question which you ask is whether the county may allow a claim for the difference between the \$600 which the purchaser paid for the land in question and the \$100 which she says she would have paid had she known that there was no building on the land. From the foregoing it can be seen that in my opinion the \$100 figure is of no importance. The essential items are the amount which the county actually withheld from the sale, and the amount which it was entitled to withhold. Any claim for refund must be based on the difference between those two amounts.

Accordingly it is my opinion that when a parcel of land has been erroneously listed and assessed as having thereon a building of a certain value, when in fact there is and has been no building on the parcel, one who purchases that parcel at a forfeited land sale may lawfully be refunded the difference, if any, between the sum that the county auditor should have withheld from the purchase price had the parcel been properly valued and assessed, and the sum actually withheld by him from the proceeds of the forfeited land sale.

I enclose a copy of my Opinion No. 3782.

Respectfully,

HUGH S. JENKINS,
Attorney General.