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1. FORFEITED LAND SALE—NET PROCEEDS OF SALE, TRACT OF LAND—WHERE PROCEEDS NOT SUFFICIENT TO PAY IN FULL DELINQUENT TAXES, ASSESSMENTS, PENALTIES AND INTEREST, COUNTY AUDITOR SHOULD DISTRIBUTE FUND—TO EACH SUBDIVISION ENTITLED TO PARTICIPATE—PROPORTION THAT TOTAL AMOUNT OF SUBDIVISIONS DELINQUENT TAXES, ASSESSMENTS, PENALTIES AND INTEREST STANDING AGAINST TRACT BEARS TO AMOUNT OF NET PROCEEDS OF SALE—NO PREFERENCE OR PRIORITY SHOULD BE GIVEN TO ANY PARTICULAR DELINQUENT YEAR—SECTION 5771 G. C.

2. DISTRIBUTIVE SHARE, EACH SUBDIVISION—SHOULD BE APPLIED TO BOTH TAXES AND ASSESSMENTS PROPORTIONATELY WHEN BOTH ARE INVOLVED—ACCRUED PENALTIES AND INTEREST INCLUDED—EACH DISTRIBUTIVE SHARE SHOULD BE ALLOCATED TO FUNDS OF SUBDIVISION FOR WHICH TAXES AND ASSESSMENTS WERE LEVIED.

SYLLABUS:

1. The net proceeds of the sale of a tract of land at forfeited land sale, in cases where the proceeds of the sale are not sufficient to pay in full the delinquent taxes, assessments, penalties and interest which stand against it, should be distributed by the county auditor under Section 5771, General Code, to each subdivision entitled to participate in the distribution, in the proportion that the total amount of the subdivision's delinquent taxes, assessments, penalties and interest standing against the tract bears to the amount of the net proceeds of the sale, and no preference or priority should be given to any particular delinquent year in making the distribution.

2. The distributive share of each subdivision should be applied to both taxes and assessments, proportionately, when both are involved, including within such taxes and assessments the penalties and interest that have respectively accrued thereon, and each distributive share should be allotted to the respective funds of the subdivision for which the taxes and assessments were levied.

Columbus, Ohio, June 15, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your letter relating to the procedure to be followed by the county auditor in distributing the proceeds of a forfeited land sale where the property sold is several years delinquent for both general taxes and special assessments, and the proceeds of the sale are insufficient to pay the taxes and assessments in full. Your letter reads as follows:

“In a number of counties throughout the state where forfeited land sales are being conducted, numerous cases arise where the forfeited property is sold for an amount less than the taxes, assessments, penalties and interest due on such property.

Section 5771, General Code, provides that the proceeds of the sale, after deduction of costs, shall be distributed by the county auditor to the subdivisions entitled to participate therein.

With insufficient funds to apply to all taxes, assessments, penalties and interest charged against such property, the county auditor is faced with the question of whether such proceeds should be applied to general taxes, or to general taxes, penalties and interest so far as he is able with the funds available, or to special assessments, or to both general taxes and special assessments, pro-rata, to the earliest years delinquencies, to the latest years delinquencies, or to all years proportionately.

Will you kindly advise us what would be the proper procedure for the county auditor to follow in case a property has several years delinquency of both general taxes and special assessments, and the proceeds of the sale of the property are insufficient to meet the said delinquent taxes and assessments."

Forfeited land sales are held by the county auditor under Section 5752, General Code, for the purpose of securing if possible the full amount of taxes, assessments, penalties, interest and costs standing against each tract, but in case no bid is received in an amount sufficient to pay the full amount, the auditor is authorized to sell the tract for the best price obtainable, irrespective of the amount charged against it. The statute reads as follows:

"The auditor in each county, on the day set for said sale shall attend at the court house and offer for sale the whole of each tract of land as contained in the list heretofore provided for, at public auction, to the highest bidder for an amount sufficient to pay the taxes, assessments, penalties, interest and costs which stand against it. We shall offer each tract separately, beginning with the first tract contained in the list. If no bid is received for any of said tracts in an amount sufficient to pay the taxes, assessments, penalties, interest and costs which stand against it, the auditor may offer such tract for sale forthwith, and sell it for the best price obtainable, irrespective of the amount of taxes, assessments, penalties, interest and costs due upon it. He shall continue through such list and may adjourn the sale from day to day until he has disposed of or offered for sale each tract of land specified in the notice. He may offer a tract of land two or more times at the same sale.

The state forester may give written notice to the auditor of any county prior to the time of the sale of his intention to purchase forfeited land for the state for an amount equal to the taxes, assessments, penalties, interest and costs which stand against it. Such notice shall be deemed a legal minimum bid at the time of the sale, and if no higher bid is received, then the land shall be deemed sold to the state; but payment therefor

shall not be made until the title thereof has been approved by the attorney-general.

Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes, assessments, penalties, interest and costs which remain after applying thereon the amount for which it was sold."

The distribution of the proceeds of the sale after deducting costs is provided for in Section 5771, General Code, which reads as follows:

"The county auditor shall deduct all costs pertaining to the forfeiture and sale of forfeited lands, except those paid under section 5704-3, from the moneys received from the sale of land and town lots forfeited to the state for the non-payment of taxes, and shall pay such costs into the proper fund. The proceeds remaining after payment of such costs shall be distributed by the county auditor to the subdivisions entitled to participate therein."

As already stated, the purpose of a forfeited land sale is to secure if possible an amount sufficient to pay in full the taxes, assessments, penalties, interest and costs which stand charged against each tract, and the mandate of the statute is that the net proceeds of the sale shall be distributed to the subdivisions entitled to participate therein.

It will be noted that Section 5771 confers no authority upon the county auditor to give either delinquent taxes or assessments, when both are involved, any preference or priority over the other, nor does it authorize him, when distributing the net proceeds, to prefer any subdivision over another, or to prefer any particular fund or delinquent year over any other fund or year. It would seem therefore, and you are so advised, that the net proceeds of the sale of a tract of land at forfeited land sale, in cases where the proceeds of the sale are not sufficient to pay in full the delinquent taxes, assessments, penalties and interest which stand against it, should be distributed by the county auditor under Section 5771, General Code, to each subdivision entitled to participate in the distribution, in the proportion that the total amount of the subdivision's delinquent taxes, assessments, penalties and interest standing against the tract bears to the amount of the net proceeds of the sale; that the distributive share of each subdivision should be applied to both taxes and assessments, proportionately, when both are involved, including within such taxes and assessments the penalties and interest that have respectively accrued

thereon; that the distributive share of each subdivision should be allotted to the respective funds of the subdivision for which the taxes and assessments were levied; and that no preference or priority should be given to any particular delinquent year in making the distribution.

The views above expressed are supported in part by opinion No. 4659 of the Attorney General for 1935, which holds that in the distribution of the proceeds of a tax foreclosure sale general taxes and special assessments stand on the same footing; and also by opinion No. 1815 of the Attorney General for 1933, which holds that when tax levies for general fund and sinking fund purposes are not collected in full, the county auditor is without authority, when distributing the proceeds of the tax collection, to make up the full amount of the loss in the sinking fund levy from the amount received from the general fund levy.

Respectfully,

HUGH S. JENKINS

Attorney General