

it would appear that no purpose would be served in waiting until next year to again make the investigation which has already been made. But as to this, it must be remembered that if proceedings may be taken in accordance with Sections 1249, et seq., General Code, predicated upon investigations made by the Director of Health one year previous to the filing of a written complaint, in so far as the law is concerned such extraordinary proceedings may be instituted which are based on an investigation of the Director of Health ten years previous to the time when any complaint whatsoever has been filed, and a finding made and mandatory order issued solely upon facts disclosed by such ten year old investigation. I do not, however, wish to be understood as holding that when making an investigation after a written complaint has been filed, in accordance with the statute, the conditions found in previous investigations may not be considered and included in the report.

Having in mind the extraordinary remedies provided by the sections of the Code here under consideration, I am impelled to the conclusion that these sections must be strictly construed and that the filing of the written complaint provided for in Section 1249, supra, is jurisdictional and must precede any investigation on the part of the Director of Health from which the mandatory order provided in Section 1261 may be issued.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

37.

AUTHORITY TO SELL LANDS FOR DELINQUENT TAXES—  
STATUTORY—MUST BE SUBSTANTIALLY AND CHRON-  
OLOGICALLY FOLLOWED—PROSECUTING ATTORNEY  
MUST FOLLOW UP WHEN—VOLUNTEER ACQUIRES NO  
TITLE, NOT SUBROGATED TO THE RIGHTS OF THE  
STATE.

*SYLLABUS:*

(1) *The authority to sell lands for delinquent taxes is conferred by statute. The procedure is jurisdictional and the statutory requirements must be substantially and chronologically followed, else the purchaser at a delinquent tax sale acquires no title.*

(2) *Where suit was brought by the prosecuting attorney of the county in which the delinquent land was located to foreclose the delin-*

quent tax lien and such proceedings were had that the land was offered for sale and did not sell for want of bidders, it became the duty of the prosecutor to follow his case up and see to it that the land was placed on the forfeited list and offered by the county auditor at forfeited sale as provided by law. In no other manner could title be carried to anyone.

(3) A volunteer who pays the charges against delinquent lands acquires no title therein whatsoever. He has no interest therein either as owner or lien-holder and has no semblance of right to be subrogated to the rights of the State. It is only the purchaser at a regularly conducted sale that is subrogated to the rights of the State for the protection of his title.

COLUMBUS, OHIO, January 25, 1937.

HON. E. DUDLEY HARRIS, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR: I am in receipt of your communication of January 14, 1937, as follows:

“A foreclosure proceeding was brought on a delinquent land tax certificate by virtue of Section 5718-3, and was offered for sale under Section 5719, but did not sell. Service was had by publication on the defendant and his unknown heirs, the defendant being deceased.”

The question is: Can an individual pay the amount of the delinquent taxes, the court costs, and go into possession and retain the same against all the world but the heirs? We understand that it would be impossible under the circumstances to procure a sheriff's deed. In short, what are the rights of a volunteer who pays all liens to date?”

The state is very particular concerning private property rights and guards them zealously. The right to tax private property is a sovereign right of the state resting upon the necessary implication that they who receive the benefit of government should pay for it. Upon this theory the state levies taxes upon the property of its citizens, real and personal. As the question involved herein relates to lands, we will deal with lands alone.

When the state levies taxes against the lands of its citizens it insists that such taxes be paid, otherwise state government would be halted. To the end that there be no interregnum in Ohio, the General Assembly has provided by law for the collection of real estate taxes. Under the law, when such taxes are not paid within a prescribed time, they become delinquent, and the state asserts itself by tacking on penalties and

interest to the original amount of taxes levied. Section 5679, General Code. The General Assembly has defined delinquent lands, viz:

“Sec. 5705 G. C. Delinquent lands as defined in this chapter shall mean all lands upon which taxes, assessments and penalties, or either, have not been paid for two consecutive semi-annual tax paying periods.”

The statutory set-up providing for the collection of delinquent real estate taxes is not only exceedingly voluminous but tinged with some degree of complexity. These statutes will not be quoted verbatim as the result would be an interminable opinion. Code sections will simply be referred to with comment.

At the outset it must be borne in mind that substantial compliance with the requisitions of the law with respect to sales or forfeiture of lands for delinquent taxes is absolutely necessary in order to effect a valid sale to enforce a tax lien or a forfeiture and the sale of the forfeited lands. As long ago as 1826, in the case of *Hughey vs. Horrell*, 2 Ohio Reports, page 231, the court said at page 233:

“The requisitions of the law are substantial and useful and can not be dispensed with. Tax sales are attended with greater sacrifice to the owners of land than any others. Purchasers at those sales seem to have little conscience. They calculate on obtaining acres for cents and it stands them in hand to see that the proceedings have been strictly regular.”

This is as much the law today as when announced. The legal machinery provided for the collection of delinquent taxes is arranged chronologically and must be followed chronologically, to the end that the state receives the delinquent taxes and the purchaser at the delinquent tax sale obtains good title.

Section 5704, General Code, as amended and supplemented, Vol. 116 O. L., Pt. II, Special Session, Amended Senate Bill No. 466, provides in substance that after each August settlement the county auditor shall make and certify a list and duplicate of all delinquent lands in his county, and deliver the duplicate to the county treasurer. The legal requisites of this list and duplicate together with the requirements for publication, are set out in this section.

Section 5713, General Code, provides that the state shall have a first and best lien on the real estate described in the delinquent list for the amount of taxes, assessments, penalty and accrued interest and other charges in the section set out, and if the taxes have not been paid for

three consecutive years after certification, the state shall have the right to institute foreclosure proceedings in the manner provided for in the same chapter.

Section 5717, General Code, specifically provides that no proceedings in foreclosure shall be instituted on delinquent lands, unless the taxes, assessments, penalties and interest have not been paid for three consecutive years after such lands have been certified as delinquent.

Section 5718, General Code, as amended Vol. 116, Ohio Laws, Pt. II, Special Session, Amended Senate Bill No. 466, provides that at the expiration of three years after certification, the county auditor shall make in quadruplicate, a certificate to be known as a delinquent land tax certificate of each delinquent tract of land, city or town lot or part of lot contained in the delinquent land list, including therein a description of same as contained in the tax list, together with the amount charged against same and remaining unpaid, together with the statement that the same has been certified to the prosecuting attorney of the county as delinquent. Such certificate shall be signed by the county auditor or his deputy and the original filed with the prosecuting attorney, one copy with the county treasurer and one copy sent to the auditor of state.

Section 5718-1, General Code, provides in substance, that before making delinquent land tax certificates provided for in Section 5718, General Code, the county auditor shall submit the list of lands on the delinquent list and subject to foreclosure, to a board composed of the president of the board of county commissioners, the county auditor and the county treasurer, and if, after investigation, in their judgment and discretion such board is of opinion that such list contains property or properties so certified which will not bring upon sale a sufficient amount of money to pay all taxes, assessments and penalties thereon, together with costs of foreclosure, such board may order the same to be omitted from the foreclosure proceedings and as to such lands so ordered to be omitted no delinquent land tax certificate shall be made.

Section 5718-2, General Code, provides that in the event the board orders any lands to be omitted from the foreclosure proceedings, the county auditor shall cause a list of such omitted lands to be published as therein provided and upon completion of such publication all such lands shall be forfeited to the state and disposed of as provided by law.

Section 5718-3, General Code, provides in substance, that it shall be the duty of the prosecuting attorney of the county, upon receipt by him of the delinquent land certificates to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state in any court of competent jurisdiction within nine months thereafter unless the taxes, assessments, penalty, interest and charges are sooner paid, and to prosecute the same to final judgment and satisfaction. The pro-

ceeding shall be the same as provided by law for foreclosure of mortgages, except that if service by publication is necessary, one publication only shall be necessary and the service shall be complete three weeks after the date of such publication.

A careful analysis of this section will develop the fact that the procedure is simplified and the delinquent land tax certificate filed by the county auditor with the prosecuting attorney shall be prima facie evidence of the amount and validity of the taxes, assessments, penalties, interest and charges appearing due and unpaid thereon and of the non-payment thereof. Section 5719, General Code, provides that the court shall make a finding of all taxes, assessments, interest, costs and charges due upon such certificate together with all accruals subsequent thereto and order the premises sold without appraisal for not less than the total amount of the finding and costs, unless the prosecuting attorney shall apply for an appraisal, in which event the premises shall be appraised as provided by Section 11672, General Code, and shall then be sold for not less than two-thirds of the appraised value thereof. This section directs the distribution of the proceeds of sale. It further provides that upon confirmation of sale a husband or wife of the party charged with the delinquent tax shall be barred of dower in the property sold, though not a party to the suit. No statute of limitations shall apply to such action. It shall not be necessary to make the state a party thereto, but it shall be deemed a party through and represented by the county treasurer.

It is well to remember that the foreclosure of a delinquent tax lien is strictly a proceeding in rem and being such no deficiency judgment can be taken for unpaid taxes.

Section 5723, General Code, provides for the redemption of delinquent lands. It is short, simple and needs no comment.

Section 5744, General Code, provides in substance that all delinquent lands offered for sale in foreclosure proceedings and not sold for want of bidders, and all lands omitted from foreclosure proceedings and duly advertised as provided in Section 5718-2, General Code, shall be forfeited to the State. Thenceforth all the right, title, claim and interest of the former owner or owners thereof, shall be considered as transferred to and vested in the state to be disposed of as the General Assembly may direct.

Section 5745, General Code, provides in substance, that the county auditor, annually, shall return, by the county treasurer, a separate list of all lands so forfeited, with the description thereof, and the amount of taxes, assessments, penalties and interest due thereof, to the Auditor of State, and all such lands shall be preserved on the tax list and duplicate until sold or redeemed, and they shall thereafter be taxed and assessed in the name of the state, and they shall be returned annually

by the county treasurer as delinquencies and credited to him as other delinquencies in his settlement.

Section 5746, General Code, provides for the redemption of forfeited lands, and needs no comment.

Section 5750, General Code, provides in substance, that the Auditor of State, annually, shall enter in a book all lands forfeited to the state for non-payment of taxes. The several county auditors, annually, between the first Monday of November and the first day of January, shall make a list of all forfeited lands and forward it to the Auditor of State, who, after comparing it with the record of forfeited lands, and correcting same to correspond with his record, shall return it to the several county auditors who shall sell the forfeited lands according to law. Lands so forfeited which for any purpose have not been so offered, shall be offered for sale as provided by law, and if not sold for want of bidders, shall be again advertised and offered for sale at the next subsequent sales by him made, until such lands are sold. We now come to the procedure necessary to be followed in forfeited sales.

Section 5751, General Code, provides in substance that the auditor of the county upon receiving the forfeited land list for his county from the Auditor of State, if the taxes, assessments, penalties and interest due thereon have not been paid on or before the fifteenth day of January next ensuing, shall cause notice thereof to be advertised once a week for two consecutive weeks prior to the second Monday of March in two newspapers in the English language of opposite politics and of general circulation printed in the county. This section likewise provides that unless all charges against the forfeited lands are paid into the county treasury and the treasurer's receipt therefor produced before the date of sale, such lands will be offered for sale and such sale will continue from day to day until each of such tracts is sold or offered for sale.

Section 5752, General Code, provides for the conduct of sale, and it is very broad in that it empowers the auditor to continue the sale from day to day, and offer the same lands for sale as often as he sees fit.

Section 5754, General Code, provides the statutory form of notice that the county auditor must use in advertising forfeited land sales.

Section 5755, General Code, provides in substance that if the land does not sell for an amount sufficient to pay all charges against it, the commissioners of the county in which it is situated at their next regular annual session in June, if, in their opinion the land is of less value than the amount of the charges against it, may order the auditor of the county to offer it for sale at the next regular sale of forfeited lands and sell it to the highest and best bidder therefor, irrespective of the amount of charges due upon it and such sale shall convey the title to such lands

divested of all arrearages of charges which remain after applying the amount thereon for which it was sold.

Let it be noted that in this opinion I have used the word "charges" as inclusive of all taxes, assessments, penalties, interest and costs generally charged against lands by the sovereign authority.

Section 5757, General Code, provides that if, upon sale of any land there is an excess remaining after satisfying charges against it, the county treasurer shall retain such excess in the treasury for the proper owner of the land so sold and upon demand made by such owner within six years from the day of sale, shall pay such excess to him.

Section 5762, General Code, provides in substance, that the county auditor on making a sale of forfeited lands, shall give to the purchaser a certificate thereof. On producing to the county auditor such certificate of sale and on the payment by such purchaser or his heirs or assigns of the sum of one dollar and twenty-five cents, he shall execute to such purchaser, his heirs or assigns, a deed therefor in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs or assigns.

Section 5764, General Code, provides that the sale of lands at forfeited sale, on which the charges have been paid before sale, is void, and the purchaser on producing his certificate of sale to the auditor of state shall have his money refunded to him from the state treasury.

Section 5767, General Code, provides in substance, that when a sale of lands for taxes shall be adjudged invalid under the laws of the state, the successful claimant shall refund to the purchaser the amount of charges due on the land when sold, with all other charges against the lands paid by the purchaser to the time of recovery, and such sum shall be paid to such purchaser before he shall be evicted from the premises by such successful claimant.

Section 5768, General Code, simply provides that the Auditor of State shall open and keep the records required and send out for sale in each year the lands forfeited to the State.

From this resume of the statutory law, it is readily discernible that there are two strings to the bow of the authorities charged with collection of delinquent taxes: first, the foreclosure of the state's tax lien, and second, the forfeited land sale.

As provided by Section 5718-3, General Code, the foreclosure of the tax lien follows the statutory procedure for the foreclosure of mortgages and the deed in such instance is made by the sheriff of the county where the land is located, as provided by Section 11693, General Code, and as provided by Section 11694, General Code, such deed shall be prima facie evidence of the legality and regularity of the sale. All the estate and interest of the person whose property the officer so professed to sell and

convey, whether it existed at the time the property became liable to satisfy the judgment or was acquired afterward shall thereby be vested in the purchaser. Notwithstanding all the safeguards the statutory law throws around purchasers at tax sales, the doctrine of caveat emptor applies to him who purchases at such sales. The statutory steps herein outlined are jurisdictional, and must be substantially followed.

In this case, suit was brought to foreclose the delinquent tax lien and such proceedings were had that the land was offered for sale, but as stated "did not sell." I assume that it did not sell for want of bidders. Under such circumstances, it became the duty of the prosecutor to follow his case up and see to it that the land was placed on the forfeited list and offered by the county auditor at forfeited sale. In no other manner could title be carried to anyone.

Coming now to your main question :

"Can an individual pay the amount of delinquent taxes, the court costs, and go into possession and retain the same against all the world but the heirs? In short, what are the rights of a volunteer who pays all liens to date?"

When you use the word "volunteer," I take it that the person in question has no interest in the land, not even as a lienholder, consequently, he could not be subrogated to the rights of the state. It is only the purchaser at a regularly conducted tax sale that is subrogated to the rights of the state for the protection of his title.

This opinion is voluminous on purpose, in the hope that it may serve prosecuting attorneys upon whose backs will fall the burden of collecting delinquent taxes in the years to come.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

38.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, ETC.,  
TO LAND IN ERIE TOWNSHIP, OTTAWA COUNTY, OHIO,  
OWNED BY MYRTLE B. MOORE.

COLUMBUS, OHIO, January 25, 1937.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: You recently submitted to this office for examination