

4193

TAXES AND ASSESSMENTS, DELINQUENT — MORTGAGEE, WHO ENTERED INTO WRITTEN UNDERTAKING TO PAY, PLUS PENALTIES, INTEREST AND OTHER CHARGES, AND WHO LATER BRINGS FORECLOSURE ACTION ON MORTGAGE AND PURCHASES PROPERTY AT JUDICIAL SALE, MAY UPON COURT ORDER, CONTINUE TO MAKE PAYMENTS, IF UNDERTAKING NOT IN DEFAULT — IF UNDERTAKING IN DEFAULT, CHARGES PAID OUT OF PROCEEDS, JUDICIAL SALE — SECTION 2672-3 G.C.

## SYLLABUS:

*A mortgagee who has entered into a written undertaking for the payment of delinquent taxes and assessments, plus penalties, interest and other charges as authorized by Section 2672-3, General Code, and who thereafter brings a foreclosure action on his mortgage and purchases the property at judicial sale, may upon application, if the court so orders, continue to make payments and carry out the terms of the undertaking, provided such undertaking is not in default. If the undertaking is in default, all unpaid taxes, assessments, penalties, interest and other charges should be paid out of the proceeds of the judicial sale.*

Columbus, Ohio, September 15, 1941.

Hon. George W. Slaughter, Prosecuting Attorney,  
Port Clinton, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

“Can a mortgagee who prior to a mortgage foreclosure has signed a contract for the payment of taxes under the Whittemore Act and made the first payment thereunder and who himself forecloses the mortgage and purchases the property at judicial sale have to pay taxes in full before the deed can be delivered by the sheriff or does he retain the benefits of the Whittemore contract as a purchaser after sale.

Your opinion in 1939, Volume 3 at page 2340 has some slight inference in respect to the question."

My Opinion No. 1574, reported in the 1939 Opinions of the Attorney General, Volume III, page 2340, referred to in your letter, contains the following syllabus:

"Amended Senate Bill No. 3 of the 93rd General Assembly was enacted for the purpose of encouraging the payment of delinquent taxes and assessments and its provisions are available to any of the persons named in Section 2671-1 thereof, including lienholders, at any time prior to the date such delinquent lands are sold at judicial sale. The provisions of the act are not available to the purchaser after sale. Such judicial sales include mortgage foreclosures as well as tax lien foreclosures, and it is immaterial whether or not such lands have been certified delinquent and entered upon the foreclosure list prior to the date of such sale."

While it is too late to enter into the written undertaking for the payment of delinquent taxes and assessments, plus penalties, interest and other charges as provided in Section 2672-3, General Code, after the property has been sold at a foreclosure sale in accordance with the provisions of Sections 5718-3 and 5719, General Code, your inquiry concerns a situation in which the mortgagee has entered into the written undertaking prior to the commencement of the mortgage foreclosure action, a situation not under consideration in the 1939 Opinion.

Certainly pertinent to your inquiry is Section 2672-16, General Code, which reads:

"When any property in relation to which an undertaking has been entered into under section 3 (G.C. Sec. 2672-3) of this act, or any previous similar enactment, is sold at foreclosure sale the court in which such action is prosecuted may in its discretion, upon application of the purchaser, provided payments under such undertaking are not in default, order such property conveyed to such purchaser subject to the terms of such undertaking, or order the balance due under such undertaking paid out of the proceeds of such sale."

Your inquiry does not disclose whether or not the payments under the undertaking in question are in default, but it must be assumed that it was the intention of the legislature to require all unpaid taxes, assessments, penalties, interest and other charges to be paid out of the sale

proceeds if the undertaking was in default.

In specific answer to your inquiry, it is my opinion that a mortgagee who has entered into a written undertaking for the payment of delinquent taxes and assessments, plus penalties, interest and other charges as authorized by Section 2672-3, General Code, and who thereafter brings a foreclosure action on his mortgage and purchases the property at judicial sale, may upon application, if the court so orders, continue to make payments and carry out the terms of the undertaking, provided such undertaking is not in default. If the undertaking is in default, all unpaid taxes, assessments, penalties, interest and other charges should be paid out of the proceeds of the judicial sale.

Respectfully,

THOMAS J. HERBERT,

Attorney General.