

4250.

DELINQUENT TAX—RESPONSIBILITY OF PAYMENT OF DELINQUENT TAXES IN INSTALLMENTS WHERE DELINQUENT LAND OWNER CONVEYS PROPERTY TO ANOTHER BEFORE INSTALLMENTS PAID.

SYLLABUS:

1. If A, the owner of a tract of land, enters into an undertaking to pay delinquent taxes in installments, under the provisions of Amended Senate Bill No. 42 of the 90th General Assembly, and Amended Senate Bill No. 105 of the second special session of the 90th General Assembly, and subsequent thereto conveys a portion of said tract to B, as long as the terms of the undertaking of A are complied with, B is required to pay only the taxes and assessments currently payable during the period covered by such undertaking.

2. In case of default, however, in the payments under the undertaking made by A, the entire amount of taxes and assessments against the property purchased by B, then due and unpaid, together with interest, at once becomes due and payable.

COLUMBUS, OHIO, May 10, 1935.

HON. R. E. SNEDDEN, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“Request your opinion upon the following proposition.

A owned two acres of land upon which he had become delinquent in his taxes. He appeared before the County Treasurer and made a contract for the payment of taxes upon the two acres of land, taking advantage of the Whittemore Act for Delinquent Taxes.

He sold one acre of this land to B, telling B of his delinquent taxes and his arrangement to pay them under the Whittemore Act. In due time the deed given to B by A for this one acre was presented to the Auditor for transfer upon his records and a proper apportionment of the future and delinquent taxes was entered against A and B for the land owned by each as a result of this sale. Now B calls to pay taxes upon the land he purchased from A and the delinquent taxes upon the land purchased by B are included by the Treasurer as part of the taxes due. B claims that A and the Treasurer of the County made a contract regarding this debt on the delinquent taxes, and until A failed to fulfill the contract made by the authority of the Whittemore Act, the land bought by B is free from all delinquent taxes; and that B can pay the current taxes and disregard the delinquent taxes on the particular piece of land which B bought.”

Section 3 of Amended Senate Bill No. 42 of the 90th General Assembly, reads as follows:

“Any such person being the owner of such real property may at such times, in lieu of making a tender as authorized by section 2 of this act, enter into a written undertaking in such form as shall be prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount

of such taxes and assessments, so delinquent, less penalties, interest and other charges, in six annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of such undertaking. The first five said annual installments shall be for ten per centum each of the full original principal amount plus interest as hereinbefore prescribed and the next annual payment shall be for the balance of said principal amount plus interest as hereinbefore prescribed. Such undertaking shall be made in duplicate; one copy shall be retained by such person and the other shall be filed with the county treasurer. The first installment shall be due and payable upon entering into such undertaking and shall be collected by the treasurer, who shall give a certificate therefor to the county auditor. Upon receipt of such certificate the county auditor shall note on the tax list and duplicate, and on the delinquent tax list, in such manner as the bureau may prescribe, the fact that such undertaking has been entered into; and thereafter, so long as such undertaking shall continue to be performed, the lands against which said delinquent taxes or assessments, penalties, interest and other charges are charged, shall not be entered on the foreclosure list, anything in the permanent statutes of this state to the contrary notwithstanding."

Section 4 of Amended Senate Bill No. 105 of the second special session of the 90th General Assembly, which amended section 4 of Amended Senate Bill No. 42 of the 90th General Assembly and extended the benefits thereof to taxes delinquent in or prior to the year 1934, reads as follows:

"A person electing to pay delinquent taxes by installments, as provided in section 3 of this act, shall thereby undertake in his own behalf and on behalf of all subsequent grantees and transferees of such real estate, that the real estate taxes and assessments currently payable during the period covered thereby will be paid when due and that the remaining five installments of such delinquent taxes will be paid in five annual installments at and during the period of collection of the first half of current real estate taxes and assessments, beginning in the year * * * 1935, with interest as hereinbefore prescribed but without penalty or other charge."

Section 6 of Amended Senate Bill No. 42, supra, reads as follows:

"A person who has entered into an undertaking to pay such delinquent real property taxes and assessments in installments pursuant to this act may, at any installment period, pay the entire unpaid balance of the principal sum of such delinquent taxes and assessments, in which event no interest shall be charged or collected on the amount so paid.

In case of any default in the payments under the undertaking provided for in this act, the county treasurer shall enter on the duplicate the date and the fact of such default. Thereupon such undertaking shall be canceled of record in the office of the treasurer and a certificate of such cancellation shall be given to the county auditor, and such officer and all other officers authorized by permanent law in this state to act in the premises, shall proceed to enforce the payment and collection of such delinquent taxes, assessments, penalties and interest, in the manner prescribed by the permanent law of this state therefor; excepting that in such event there shall be credited on the tax list and du-

plicate and the delinquent land tax list and duplicate thereof the amounts theretofore paid under such undertaking, and the penalties on such delinquent taxes and assessments shall be adjusted to the amount of the principal sum thereof remaining unpaid; and the interest, if any, chargeable on such tax lists and duplicates at the rate prescribed by the permanent law of this state shall be computed from the date of such default only."

After reading the above sections, the language of which is clear in meaning, it at once becomes apparent that in the undertaking entered into by a person electing to pay delinquent taxes in installments, such person agrees that the real estate taxes and assessments payable currently during the period in which the remaining installments of delinquent taxes are to be paid, will be paid when due either by himself or his grantees. It is likewise obvious that the first installment of delinquent taxes is due and payable immediately upon entering into such undertaking, and the balance of such delinquent taxes are to be paid in five annual installments during the period of collection of the first half of the current taxes. It would therefore appear that if the second or any subsequent installment were paid when due or if any of such installments have not become due under the terms of A's undertaking, B is required to pay only the current taxes and assessments due on the property owned by him.

If any of such installments, however, have, under the terms of the agreement become due and are unpaid, A's undertaking would then be canceled and the entire amount of taxes and assessments levied against the property purchased by B from A, then due and unpaid, together with penalties and interest, would at once become due and payable.

Therefore, in specific answer to your question, it is my opinion that:

1. If A, the owner of a tract of land, under the provisions of Amended Senate Bill No. 42 of the 90th General Assembly, and Amended Senate Bill No. 105 of the second special session of the 90th General Assembly, enters into an undertaking to pay delinquent taxes in installments, and subsequent thereto conveys a portion of said tract to B, B, as long as the terms of the undertaking of A are complied with, is required to pay only the taxes and assessments currently payable during the period covered by such undertaking.

2. In case of default, however, in the payments under the undertaking made by A, the entire amount of taxes and assessments against the property purchased by B, then due and unpaid, together with interest, at once becomes due and payable.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4251.

APPROVAL, ABSTRACT OF TITLE, ETC. RELATING TO THE PROPOSED
PURCHASE OF LAND IN HANOVER TOWNSHIP, ASHLAND COUNTY,
OHIO—LORANA WILSON.

COLUMBUS, OHIO, May 10, 1935.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, warranty deed,