

ensuing year, and the board of education is directed to levy a tax of not to exceed one and one-half mills for such library purposes. As held in the case of *State ex rel. vs. Gebbard*, 12 O. C. C. (N. S.) 25:

“Offices are considered incompatible when one is subordinate to or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both.”

What amount is received by the librarian as compensation and what monies are spent by him as librarian, would of course depend to a very substantial extent upon the revenue derived from the tax levy made by the board of education by virtue of Section 7639, *supra*. The board of education, therefore, does have a check upon the board of library trustees and its employes, and for this reason alone employment as librarian is in my opinion incompatible with membership on the school district board of education.

It is therefore my opinion that a member of the board of education which has appointed a board of library trustees under authority of Section 7635, General Code, cannot legally be employed by such board of trustees as librarian for the school district public library.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1065.

TAX AND TAXATION—DELINQUENT LANDS FORFEITED TO STATE—
HOW SOLD.

SYLLABUS:

Delinquent lots and lands forfeited to the State of Ohio for non-payment of taxes and assessments, prior to March 21, 1917, should not be sold under the provisions of Section 5718, General Code, but such forfeited lands should be sold either under the provisions of Sections 5744 to 5758, General Code, inclusive, or sold under the provisions of Sections 2667 and 2670, General Code.

COLUMBUS, OHIO, September 27, 1927.

HON. WILLIAM B. JAMES, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication in which you ask the following:

“May lands which were forfeited to the State of Ohio for non-payment of taxes prior to the enactment of Sections 5704-5727, inclusive, as now in force, be sold under the provisions of Section 5718, or do the provisions of Section 5748, et seq., still apply?”

Sections 5704 to 5727, inclusive, of the General Code, to which you refer, were enacted by the General Assembly on March 21, 1917, (107 O. L. 733) and former

sections of the same numbers were repealed. The sections re-enacted by the act of 1917, supra, radically changed the law with reference to the sale of lots and lands which should thereafter be returned delinquent for non-payment of taxes.

Sections 5712 to 5718, General Code, inclusive, of the act of 1917, provide in substance that the county auditor and his deputy shall make a complete certificate in triplicate for each tract of land, city or town lot, contained in an advertisement theretofore made of the delinquent lands in his county on which taxes and assessments have not been paid. The pertinent part of Section 5712, General Code, reads:

“ * * * The original of said certificate of all the tracts of land, city or town lots or parts of lots, shall be forwarded to the auditor of state, the duplicate and triplicate thereof to be kept, one in the county treasurer's office and one in the county auditor's office, bound in book form. The original duplicate and triplicate of each certificate shall be signed by the county auditor, or his deputy and countersigned by the county treasurer, or his deputy. Interest at the rate of eight per cent per annum shall be charged on the duplicate against the delinquent lands, city or town lots or parts of lots certified by the county auditor on such certificate.”

Section 5713 of the General Code reads:

“The state shall have a first and best lien on the premises described in said certification, for the amount of taxes, assessments and penalty, together with interest thereon at the rate of eight per cent per annum, from the date of delinquency, to the date of redemption thereof, and the additional charge of twenty-five cents for the making of said certification, and sixty cents for advertising. If the taxes have not been paid for four consecutive years, the state shall have the right to institute foreclosure proceedings thereon, in the same manner as is now or hereafter may be provided by law, for foreclosure of mortgages on land in this state, and there shall be taxed by the court as costs in the foreclosure proceedings instituted on said certification, the cost of an abstract or certificate of title to the property described in said certification, if the same be required by the court, to be paid into the general fund of the county treasurer.”

It will be observed from the provisions of the sections, supra, that the state is given the right to institute foreclosure proceedings on all such delinquent lands, the taxes on which have not been paid for four consecutive years, but it will be noted that the sections do not make provision as to when the officer shall institute the action to sell the delinquent lands.

Section 5718 of the General Code reads:

“It shall be the duty of the county auditor to file with the auditor of state, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years, and a certified copy thereof shall at the same time be delivered to the county treasurer, and it shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate, within three months from the date of filing of such certificate with the auditor of state, by the county auditor; it shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate

has been duly filed by the county auditor ; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property therein described, and the prayer of the petition shall be, that the court make an order that said property be sold by the sheriff of the county in the manner provided by law for the sale of real estate on execution. And the treasurer need not set forth any other or further special matter relating thereto. The certified copy of said delinquent land tax certificate, filed with the county treasurer, as hereinbefore provided, shall be prima facie evidence on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon, plus the amount of eighty-five cents due from the defendants for the delinquency of each year, for advertising and issuance of certificates, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto."

The section, supra, makes provision for the county auditor to file with the auditor of state a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years and also provides a certified copy thereof shall at the same time be delivered to the county treasurer, and it then becomes the duty of the auditor of state to cause foreclosure proceedings to be brought to collect all such delinquent taxes, assessments, penalties and interest within three months from the date of filing such certificate with the auditor of state. The statute designates what shall constitute sufficient allegations in the petition and provides a certified copy of the delinquent land tax certificates filed with the county treasurer shall be prima facie evidence, on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon.

You say that the title to the lands was forfeited to the state prior to the enactment of the sections above referred to. That being true, such lands were forfeited under the provisions of statutes repealed by the act of 1917. The title and interest thereto of the former owner was transferred to and vested in the state under the provisions of former statutes radically different from the provisions of the act of March 21, 1917. However, in the act of 1917, the legislature did not repeal Sections 5744, et seq., in which provision is made for the sale of delinquent lands, the title to which was forfeited to the state in order, no doubt, to preserve to the state the same remedy for the ultimate sale thereof as existed at the time such lands were forfeited.

Before the amendment of the statutes by the act of 1917, supra, Section 5744, General Code, read, as it does now, as follows :

"Every tract of land and town lot offered for sale by the treasurer, as provided in the next preceding chapter, and not sold for want of bidders, 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."

The owners' title to the lands to which you refer was forfeited to the state under former sections of the statute because of a failure to pay the taxes for two consecutive semi-annual tax paying periods, as provided in Sections 5678 and 5679, General Code. The provisions of the statutes repealed gave to the owners of the lands the right to redeem the forfeited lands by paying all the delinquent taxes, assessments and penalties at any time before the state parted with its title to the forfeited lands. Also the sections of the statutes repealed did not contain any provisions for the sale of the

owners' delinquent lands, upon an unredeemed delinquent land tax certificate filed by the county auditor with the auditor of state. Under such a situation as to the lands in question, I am unable to see how the county auditor can now legally make the certificate required by Section 5718 with reference to those lands.

Section 5749, General Code, provides :

"The auditor of state shall cause all lands, inlots, outlots, and parts of lots, forfeited to the state for the non-payment of taxes, and which have not since been purchased by the original owner or owners, or any other person, to be entered in a book to be provided for that purpose. Such entry shall set forth the name, by township and county as in case of other lands."

Section 5750, General Code, provides :

" * * * The several county auditors, once in two years, between the first Monday of September and the first day of October, shall make a list of all forfeited lands and lots, and forward it to the auditor of state, who, after comparing it with the record of forfeited lands in his office, and correcting any errors or omissions therein, shall return it to the several county auditors, who shall sell the forfeited lands and lots, agreeably to the provisions of this chapter. Lands and lots so forfeited, which, for any cause have not been so offered, shall be offered for sale under the provisions of this chapter, and if not sold for want of bidders, shall be again advertised and offered for sale by the county auditor, at the next subsequent sales by him made, under this chapter, until such lands and lots are sold."

Pertinent provisions are found in Sections 5751 and 5754, General Code, for the publication of notice of the list and sale of forfeited land. If such forfeited land be not sold at the second annual public sale, for an amount sufficient to pay the taxes and penalties which stand against it, provision is made for the ultimate sale thereof by Section 5755 of the General Code, which reads :

"If a tract or parcel of land does not sell at such public sale for an amount sufficient to pay the taxes and penalty which stand against it, the auditor shall return it as unsold, to be retained upon the list of forfeited lands, to be offered for sale the next succeeding sale as other forfeited lands. If such tract or parcel of land is offered for sale at two succeeding sales, and still remains unsold, the commissioners of the county in which it is situated, at their regular annual session in June preceding the next regular sale, if in their opinion it is of less value than the amount of taxes and penalties due upon it, having fixed a minimum price therefor, 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, at not less than said minimum price, irrespective of the amount of taxes and penalty due upon it. Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes or penalty which remain after applying the amount thereon for which it was sold."

Since Sections 5744 to 5758, General Code, inclusive, were in force when the lands in question were forfeited to the state, coupled with the fact that the provisions in Sections 5704 to 5718, inclusive, were enacted after the lands were forfeited to the state, I am of the opinion the latter sections do not apply and should not be followed in

selling the lands in question, but I think the lands may be sold under the provisions of Sections 5744 to 5755 of the General Code, inclusive.

I desire also to call attention to other sections of the General Code, under which such forfeited lands may be sold, viz., Sections 2667 and 2670, General Code, which read as follows:

Section 2667. "When taxes or assessments, charged against lands or lots or parcels thereof upon the tax duplicate, authorized by law, or any part thereof, are not paid within the time prescribed by law, the county treasurer in addition to other remedies provided by law may, and when requested by the auditor of state, shall enforce the lien of such taxes and assessments, or either, and any penalty thereon, by civil action in his name as county treasurer, for the sale of such premises, in the court of common pleas of the county, without regard to the amount claimed, in the same way mortgage liens are enforced."

Section 2670. "Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty and costs, for the payment of which the court shall order such premises to be sold without appraisalment. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes and assessments, and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. When the lands or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer."

The method provided by the later sections, supra, is in addition to other remedies provided by law, and gives the county treasurer the option to bring suit in the common pleas court of his county to sell delinquent lots and lands when the taxes or assessments charged against such real estate are not paid within the time prescribed by law. The county treasurer is authorized to enforce the lien of such taxes and assessments, or either, without regard to the amount claimed, in the same way mortgage liens are enforced. Under the provisions of Section 2667, General Code, if the auditor of state requests the county treasurer to bring suit to collect taxes and assessments charged against lots and lands on the tax duplicate as authorized by law, which are not paid within the time prescribed by law, the county treasurer shall enforce the lien of such taxes or assessments, or either, and any penalty thereon, by civil action in the common pleas court, which court, under the provisions of Section 2670, General Code, shall order such premises sold without appraisalment. The above sections of the statutes were in force at the time the lands to which you refer were forfeited to the state for the non-payment of the delinquent taxes and are still in force and are in addition to the other remedies provided by Sections 5744 to 5755 of the General Code, inclusive.

Answering your question specifically, I am of the opinion that delinquent lots and lands forfeited to the State of Ohio for non-payment of taxes and assessments, prior to March 21, 1917, should not be sold under the provisions of Section 5718, General Code, but such forfeited lands should be sold either under the provisions of Sections 5744 to 5758, General Code, inclusive, or sold under the provisions of Sections 2667 and 2670, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.