

It should be borne in mind that a mortgage deed, as it is used in Ohio, is a conveyance of property absolute in form but containing a condition or covenant to become void upon the performance of the obligation secured thereby. *Hoffman vs. Mackall*, 5 O. S. 124; *Shaw vs. Walbridge*, 33 O. S. 1; *Slutz & Laure vs. Desenberg*, 28 O. S. 371; *Hurd vs. Robinson*, 11 O. S. 414.

Considering the language of the entire act with reference to its effective purpose that is, of obtaining a more convenient or practical method of subjecting lands upon which the taxes have been permitted to remain delinquent for an unreasonable time to the payment thereof, the apparent legislative intent is to vest the absolute legal title to the forfeited lands in the state of Ohio but to permit the equitable title and right of possession to remain in the former owner until such time as it is divested by sale by the state or until such legal title has been redeemed by the payment of the taxes, assessments, interest, penalties and court costs standing charged against such parcel upon the records of the county within which such property is located. In other words, the legislature has merely provided what to it seemed a better method of exposing the property to sale than by alias orders issued from the court by placing the entire control of such sale in the county auditor of the county in which the premises are located. I do not believe that the language of the act shows the intent of the legislature to divest the former owner of his right of possession until an actual sale has been effected of the lands in question, especially in view of the fact that the statute specifically provides the amount for which the property may be redeemed and further, since in Section 5745, General Code, the delinquent lands are made taxable as though owned by the former owner.

If I am correct in my reasoning the conclusion would follow that no state or county officer has the authority to collect the rents or profits arising from "forfeited lands" and has no authority to bind the state on an obligation for maintenance and repair thereof.

Specifically answering your inquiry it is my opinion that when lands are "forfeited" to the state by reason of the fact that no bidders were obtained at a sale in foreclosure of the delinquent tax lien against a parcel of property pursuant to the provision of Sections 5705 et seq. General Code, and become "forfeited lands", the only interest of the state in such lands is that of a holder of legal title thereof to be disposed of and the proceeds applied toward the payment of the taxes, assessments, penalty, interest and court costs standing charged against such parcel, and the state has no right to possession of such lands or to the rents arising therefrom, and must account to the "former owner" for any sum received in excess of the amount of such taxes and charges.

Respectfully,

JOHN W. BRICKER,

Attorney General.

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APPROVAL, CORRECTED ABSTRACT OF TITLE TO LANDS OF EDMUND P. CAPPELL AND CHARLES CAPPELL IN BATAVIA TOWNSHIP, CLERMONT COUNTY, OHIO.

COLUMBUS, OHIO, March 11, 1933.

HON. O. W. MERRELL, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a corrected abstract of title, warranty deed, encumbrance record No. 1374 and letter

of authorization from the Board of Control, relating to the proposed purchase by the State of Ohio of a parcel of land which is owned of record by Edmund P. Cappell and Charles Cappell in Batavia Township, Clermont County, Ohio, which tract of land is more particularly described as follows:

"Beginning at the intersection of the southeasterly line of a 38.1 acre tract of Edmund P. and Charles Cappell with the center line of the Cincinnati & Batavia Pike; thence north 51 deg. 30' East Two Hundred Sixty-nine and 63/100 (269.63) feet to a point; thence North 37 deg. 51' West One Hundred Seventy-five and 78/100 (175.78) feet to a point; thence North 52 deg. 09' East Two Hundred Twenty-four and 55/100 (224.55) feet to a point; thence North 49 deg. 51' West Sixty-four and 96/100 (64.96) feet to a point; thence South 51 deg. 30' West Six Hundred Thirty-two and 79/100 (632.79) feet to a point in the center line of the Cincinnati & Batavia Pike; thence South 70 deg. 44' East Two Hundred Eighty and 09/100 (280.09) feet along the center line of the Cincinnati & Batavia Pike to the point and place of beginning. Containing 2.192 acres of land.

Being part of the same premises conveyed to Edmund P. Cappell by Ella M. Bradley, by deed recorded in Deed Book 183, page 280, Clermont County, Ohio, Records."

Upon examination of the corrected abstract of title submitted, I find that Edmund P. Cappell and Charles Cappell as tenants in common have a good indefeasible fee simple title to the above described parcel of land free and clear of all encumbrances, except the taxes on the property for the last half of the year 1932, which taxes are due and payable in June, 1933. It does not appear that the taxes on this particular parcel of land above described have been segregated from those levied on the larger tract of land of which this parcel is a part. Inasmuch as this property, apparently, is to be conveyed to the State of Ohio free and clear of all encumbrances, the unpaid taxes on this parcel should be segregated and some satisfactory arrangements should be made with respect to the payment of the same before the transaction for the purchase of this property is closed.

Upon examination of the warranty deed tendered by Edmund P. Cappell and Charles Cappell, I find that said deed has been properly executed and acknowledged by said grantors and by one Doretta Cappell, the wife of Edmund P. Cappell. I further find that the form of said deed is such that the same is sufficient to convey the above described property to the State of Ohio free and clear of the inchoate dower interest of Doretta Cappell in and to her husband's undivided interest in the property and free and clear of all encumbrances whatsoever.

Encumbrance record No. 1374, submitted as a part of the files relating to the purchase of this property, shows that the same has been properly executed and approved, and that there is a sufficient unencumbered balance in the proper appropriation account to pay the purchase price of the above described property, which purchase price is the sum of \$550. I further find from the files submitted that the purchase of this property has been approved by the board of control.

I am accordingly approving said abstract of title, warranty deed, encumbrance record and other files relating to the purchase of this property, and I herewith return the same to you.

Respectfully,
JOHN W. BRICKER,
Attorney General.