

fore my opinion that the township trustees could not administer such relief.

You further inquire as to whether the woman in question has the necessary residential requirements to obtain such relief in Portage County, inasmuch as she has not lived in Portage County for twelve consecutive months without charitable relief. In 14 O. Jur., page 579, it is stated:

“It is a general principle of law that a woman by marriage loses her own domicile and acquires that of her husband.”

It is also stated in Opinions of the Attorney General, 1927, Vol. II, at page 1217:

“* * * it is also true that the legal settlement of the husband is the legal settlement of the wife. * * * She (referring to the wife) * * * moved to Summit County where she was married to a person who had a legal settlement in Summit County. The court held (referring to the case of *Board of Commissioners of Summit County vs. Commissioners of Trumbull County*, 116 O. S. 663) that the marriage of the mother to the person who had a legal settlement in Summit County was sufficient to give her a legal settlement in that county * * *. *This was by virtue of the marriage of the mother and did not require a year's residence without assistance therein.*” (Italics and words within parentheses the writer's.)

It is apparent from your inquiry that the husband has a legal settlement and residence in Portage County. The wife, by her marriage and moving into Portage County, acquired the legal settlement and residence of her husband and it is not necessary that she live therein for twelve consecutive months without relief to be eligible for tubercular relief to be furnished by the commissioners of Portage County.

Specifically answering your inquiry, it is my opinion that:

1. The county commissioners and not the township trustees should render tubercular relief for a person requiring such relief in a sanatorium.
2. Where a woman marries a person who has a legal settlement and residence in a county, she thereby acquires by her marriage such legal settlement and residence without living therein for twelve consecutive months without charitable relief.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1519.

DELINQUENT TAXES—FORECLOSURE OF TAX LIENS—UNPAID COSTS THEREOF PAYABLE OUT OF GENERAL COUNTY FUNDS WHEN.

SYLLABUS:

When unpaid costs in an action for the foreclosure of tax liens brought by the county treasurer have been taxed against the county treasurer, by reason of the fact that the premises did not sell at the sale thereunder for an amount sufficient

to pay the court costs, or by reason of a dismissal of the action by the county treasurer, such costs may be paid out of the general funds of the county appropriated for such purposes by the county commissioners.

COLUMBUS, OHIO, September 6, 1933.

HON. RAY B. WATERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which reads as follows:

“We have received a bill from one of the local newspapers in the sum of approximately Forty-five Hundred Dollars (\$4500.00), covering unpaid advertising costs incurred in quite a number of delinquent tax sales covering a period of years.

In the cases in which these costs were unpaid the property was either sold for a sum less than the court costs or the cases dismissed by reason of some irregularity in the proceeding.

It is our understanding that there is no appropriation made directly for payment of such costs, in fact, we are informed that there is no place on the Auditor's forms for setting up such an item.

We should appreciate an opinion from your office in reference to the two questions:

1. May the county commissioners now set up in their current appropriation an item covering the unpaid court costs or advertising costs where property has been sold at delinquent tax foreclosure sales in years gone by for less than the court costs?
2. May the county commissioners set up in their current appropriation an item to cover court costs or advertising costs incurred in previous years in delinquent tax foreclosure cases where it was necessary to dismiss the actions by reason of some irregularity in the proceeding?”

In your inquiry you do not state whether any portion of the court costs were incurred after the amendment of the statutes with reference to proceedings in foreclosure of delinquent lands. (114 O. L. 836) Since you state that the advertising bills in question accrued over a period of several years, I assume that they accrued prior to October 14, 1931, the effective date of such act.

Section 5719, General Code, as it existed prior to such date, provided that upon hearing of such foreclosure action “judgment shall be rendered for such taxes and assessments or any part thereof, as are found due and unpaid, and for penalty, interest 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 * * * .”

You state that in some instances the premises at the sale on foreclosure did not sell for an amount sufficient to pay the costs of the proceedings. This factor gives rise to your inquiry, is the county, which was the plaintiff in such action, liable for such costs?

While there is a rule of law that a governmental agency can not be held liable for an obligation unless so provided by statute, yet there is also a rule that when a governmental agency invokes the aid of the courts, it becomes subject to the jurisdiction of the court for all purposes of such action and is subject to whatever judgment may be rendered therein against it. In other words, the govern-

mental agency may not use the courts for the advantages that may accrue therefrom without at the same time accepting the burdens incident to such use.

At common law, a recovery of costs was unknown. Each litigant paid his own costs, that is, the court costs caused by him. *Farrier vs. Cairn*, 5 O. S., 45. The legislature in Ohio has authorized the court to grant a judgment to the plaintiff or prevailing party for his costs and the method for the enforcement of such judgment. (See Sections 11614 to 11630, General Code.) I find no statute which would relieve the county treasurer, as a litigant, from the payment of the court costs incurred by him. It is therefore my opinion that the county is liable for the court costs incurred or caused by it in the prosecution of a foreclosure proceeding for the enforcement of a delinquent real estate tax lien.

My predecessor in office, in an opinion rendered under date of February 3, 1930 (1 O. A. G. 1930, p. 204) held that such costs of advertisement might be first paid from the general fund of the county appropriated therefor. The first paragraph of the syllabus of such opinion reads:

"The expense of securing service by publication upon necessary party defendants in an action to foreclose the state's lien for delinquent taxes under the provisions of Section 5718, General Code, may be paid out of the proceeds of the sale of the property as a part of the costs in the action; or such expense may be paid out of the general county fund subject to appropriation therefor by the county commissioners and included in the judgment against the property owner against whom such delinquent taxes have been assessed."

The opinion held that the primary obligation for the payment of the costs of advertisement of such sale was upon the county, even though the county might recoup such expense by having it taxed as a part of the costs. If the county is liable for the entire amount of such costs, it necessarily must follow that the county would remain liable for any deficiency remaining after the sale of the property in foreclosure.

Section 5718, General Code, as amended (114 O. L. 834), does not materially change the procedure or liability as to the taxing of costs and could not cause a departure in the liability for such costs. If a county causes a suit to be instituted but later causes it to be dismissed without prosecution, the reasoning above set forth would impel me to hold that the county is liable for the court costs accruing because of such conduct.

Specifically answering your inquiry, it is my opinion that:

When unpaid costs in an action for the foreclosure of tax liens brought by the county treasurer have been taxed against the county treasurer, by reason of the fact that the premises did not sell at the sale thereunder for an amount sufficient to pay the court costs, or by reason of a dismissal of the action by the county treasurer, such costs may be paid out of the general funds of the county appropriated for such purposes by the county commissioners.

Respectfully,

JOHN W. BRICKER,

Attorney General.