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WHEN ADVERTISING FOR SALE OF FORFEITED LANDS, SUCH ADVERTISING MUST INCLUDE NAMES OF ALL PERSONS ON AUDITOR'S GENERAL TAX LIST AND DUPLICATE AS BEING OWNERS OF SAID LANDS—§§5723.01, 5723.19, R.C.

SYLLABUS:

In the advertising of a sale of forfeited lands to be made by the county auditor under Sections 5723.01 to 5723.19, Revised Code, the description of the lands being advertised must include the names of all persons listed on the auditor's general tax list and duplicate as being the owners of such lands, but there is no requirement that the names of persons who may own an interest in such lands but who are not listed as owners on said tax list and duplicate be included in the description.

Columbus, Ohio, August 24, 1961

Honorable Robert L. Marrs, Butler County Prosecutor
220 Dollar Building, Hamilton, Ohio

Dear Sir :

Your request for my opinion reads :

“This office has received a request from our Bar Association title examiners and Auditor for a clarification of matters relating to sale of forfeited lands and the validity of the title certificate to the purchaser of said lands.

“Enclosed please find a chain of title upon which the following question arose, and this request is made for your interpretation as to the effect of Section 5723.12 O.R.C. (GC 5762).

“‘Does Section 5723.12 O.R.C. (GC 5762) and 5723.13 O.R.C. (GC 5762-1) apply to title holders in the chain of title who *do not* have knowledge of their interest in the real estate and whose interest is sold at tax sale *without* their knowledge ‘or notice’ ?”

“An early reply would be appreciated.”

The particular facts upon which your question arose involved land owned by co-tenants. The land had devolved through several estates by both devise and descent; due to errors in handling some of these estates, whether the co-tenants knew the extent of their interest in the land, or knew even that they had any interest in the land, is questionable. In addition, in the advertisements that must be published at several stages before land may be forfeited to the state for non-payment of taxes, and before the forfeited land may be sold by the county, the county auditor listed the lot by its number, and listed the name of only one of the co-tenants, plus the phrase “et al”.

Briefly, delinquent lands are forfeited to the state for non-payment of taxes rather than to go through foreclosure proceedings when (a) the county board of revision decides that a sale by foreclosure proceedings would not bring an amount equal to the total taxes, interest, etc. due plus the costs of foreclosure, Sections 5721.14 and 5721.18, Revised Code, or (b) there are no bidders for the land at the foreclosure sale, Section 5723.01, Revised Code. In either event a court must order that the land

be forfeited to the state it is then offered for sale. Sections 5721.17 and 5723.01, Revised Code.

Section 5723.12, Revised Code, describes the effect of the sale, reading :

“The county auditor, on making a sale of a tract of land to any person under sections 5723.01 to 5723.19, inclusive, of the Revised Code, shall give such a purchaser a certificate of sale. On producing or returning to the auditor the certificate of sale, the auditor, on payment to him by the purchaser, his heirs, or assigns, of the sum of five dollars, shall execute and deliver to such purchaser, his heirs, or assigns, a deed, which deed shall be prima-facie evidence of title in the purchaser, his heirs, or assigns. When a tract of land has been duly forfeited to the state and sold under such sections, the conveyance of such real estate by the auditor shall extinguish all previous title and invest the purchaser with a new and perfect title, free from all liens and encumbrances, except taxes and installments of special assessments and reassessments not due at the time of such sale, and except such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which the land was forfeited, became due and payable.”

According to this section, when land is duly forfeited to the state and is sold according to statutory provisions, *all* previous title to that particular tract of land is extinguished. It is my opinion that the use of the most inclusive of words, *all*, includes all persons previously having any interest in the land except those whose interests arise from easements or covenants running with the land. The purchaser is invested with *a new and perfect title* except for the specific limitations. “New and perfect title” means implicitly a complete title.

There is, of course, a condition precedent to attaining a “new and perfect title”; the land must be first duly forfeited to the state. Section 5723.13, Revised Code, sheds light as to the time within which one may question whether this condition was met; it reads :

“Whenever real property in this state is sold under sections 5721.01 to 5721.28, inclusive, or 5723.01 to 5723.19, inclusive, of the Revised Code, no action shall be commenced, nor shall any defense be set up to question the validity of the title of the purchasers at such sale for any irregularity, informality, or omission in the proceedings relative to the foreclosure, forfeiture, or sale, unless such action is commenced or defense set up within one year after the deed to such property is filed for record.”

As to the instant fact situation, even if the omission of some of the names from the advertisement was an “. . . omission in this proceedings relative to the . . . foreclosure or sale . . .,” those whose names were omitted had one year in which to question the validity of the purchaser’s title. As, in the specific situation you present, eleven years have elapsed, the persons concerned are precluded from ever questioning such validity. The Ohio Supreme Court followed this statute in *Bliss Realty, Inc. v. Darash*, 158 Ohio St., 287, 49 Ohio Ops. 128, 109 N.E. (2d), 276 (1952), where the situation presented to the court was one where the delinquent land list had not even been advertised. The situation you present is even stronger in favor of the application of the statute of limitations.

You have, however, asked for my opinion on the more general question of whether Section 5723.12, Revised Code, applies as against persons in the chain of title who are ignorant of their interests in the land, and whose interests are sold without notice given to them personally.

I am unable to find any section in the Revised Code requiring all persons having an interest in land upon which real estate taxes are overdue to be personally served with notice. Actual tax bills are sent out annually by the county treasurer, but only to persons charged on the general tax list and duplicate; Section 323.13, Revised Code. Otherwise, the only form of notice called for is by advertisement; this is required in the following steps:

- (1) The delinquent land list (composed of lands upon which two consecutive semi-annual installments of taxes are unpaid) must be published twice in two papers; Section 5721.03, Revised Code.
- (2) Prior to forfeiture, the list of lands omitted from foreclosure by the county board of revision must be advertised once a week for two consecutive weeks in two papers and must give notice of the hearing in the common pleas court. Section 5721.16, Revised Code.
- (3) The list of forfeited lands must be published in the notice of the annual auditor’s sale once a week for two consecutive weeks; Section 5723.05 and Section 5723.10, Revised Code.

Under the sections cited above, the advertised lists must contain the same facts as are contained in the original tax list and duplicate made up by the county auditor annually under the authority of Section 319.28,

Revised Code; see also Opinion No. 1881, Opinions of the Attorney General for 1940, page 199.

Section 319.28, Revised Code, reads in part :

“On or before the first Monday of August, annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, * * *.”

You will note that this section rather than requiring the list to contain the names of the persons *owning* the property requires it to list the names of persons in whose name the property is *listed*. In my view, the distinction is significant.

The county auditor may, under the authority of Section 319.22, Revised Code, search the record of deeds in any county and determine in whose name land ought to be listed; but he is not required to do this. Section 319.20, Revised Code, reads in part :

“On application and presentation of title, with the affidavits required by law, or the proper order of a court, * * * the county auditor shall transfer any land or town lot or part thereof, * * * charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise. * * *”
And, Section 317.22, Revised Code, reads in part :

“The county recorder shall not record any deed of absolute conveyance of land * * * until it has been presented to the county auditor, and by him indorsed ‘transferred’, or ‘transfer not necessary’. Before any real estate, the title to which has passed under the laws of descent, is transferred from the name of the ancestor to the heir at law or next of kin of such ancestor, or to any grantee of such heir or next of kin; and before any deed or conveyance of real estate made by any such heir or next of kin is presented to or filed for record by the recorder, the heir or next of kin, or his grantee, agent, or attorney shall present to the auditor the affidavit of such heir or next of kin, or of two persons resident of this state, each of whom has personal knowledge of the facts. Such affidavit shall set forth the date of the ancestor’s death, and

the place of residence at the time of death; the fact that he died intestate; the names, ages, and addresses, so far as known and can be ascertained, of each of such ancestor's heirs at law and next of kin, who, by his death, inherited such real estate, the relationship of each to the ancestor, and the part or portion of such real estate inherited by each. Such transfers shall be made by the auditor in accordance with the statement contained in the affidavit, and he shall indorse upon the deed or conveyance the fact that such transfer was made by affidavit. * * *"

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As I read these two sections, it is the responsibility of each owner of a tract of land to see to it that the county auditor has knowledge of his ownership.

The procedure by which land is forfeited to the state for nonpayment of taxes and by which the land is later sold is entirely statutory. So long as advertisements required by law contain the names that are on the auditor's general tax list and duplicate, the law has been complied with, and those owning land but whose names are not on that list are precluded from attacking the title of one who bought the land after it had forfeited to the state.

It must be remembered that the tax is not upon persons owning the land, but upon the land itself; the state's lien is upon the entire estate and not merely upon the estate of the particular person in whose name the land itself is listed; *Douglas v. Dangerfield*, 14 Ohio 522 (1846), *Clark v. Lindsey*, 47 Ohio St., 437, 25 N.E. 422 (1890); *Southern Ohio Savings Bank & Trust Co. v. Bolce*, 165 Ohio St., 201, 135 N.E. (2d), 382, 59 Ohio Ops. 290 (1956).

In other words, persons having an interest in premises must see to it that taxes are paid, *Jones v. DeVore*, 8 Ohio St., 430 (1858). And it also seems to me only proper that it is up to a person to discover whether or not he has an interest in land; it is not a necessary function of government to apprise private persons of their interests.

Accordingly, it is my opinion and you are advised that in the advertising of a sale of forfeited lands to be made by the county auditor under Sections 5723.01 to 5723.19, Revised Code, the description of the lands being advertised must include the names of all persons listed on the auditor's general tax list and duplicate as being the owners of such lands,

but there is no requirement that the names of persons who may own an interest in such lands but who are not listed as owners on said tax list and duplicate be included in the description.

Respectfully,

MARK McELROY

Attorney General