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DELINQUENT LAND TAXES—SHERIFF AUTHORIZED TO OFFER FOR SALE AGAIN, LAND UNSOLD FOR LACK OF BIDDERS—CONVEYANCE OF LANDS TO OTHERS THAN OWNERS UPON PAYMENT OF AMOUNT DUE UNAUTHORIZED—DUTY TO SELL TO HIGHEST BIDDER.

SYLLABUS:

1. *In the event the sheriff offers land for sale in connection with the foreclosure of a tax lien, and the same is not sold for want of bidders, it may be again offered for sale upon the obtaining of an alias order of sale.*

2. *There is no provision of law authorizing the sheriff to convey said premises to others than the owners of said land upon the payment of the taxes, penalties and costs.*

3. *In such proceedings, it is the duty of the sheriff to sell said lands to the highest bidder even though the amount of the bid is less than the amount of the delinquent tax and penalties.*

COLUMBUS, OHIO, April 8, 1930.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion relative to the provisions of Section 5712 and related sections of the General Code, upon the following questions:

“1. If the sheriff offers the land for sale once and makes his return ‘No Sale, For Want of Bidder’ can he re-advertise, and offer it for sale the second time if he has reasons to believe that parties are interested who will bid at second sale?

2. If the sheriff makes his return on first sale ‘No Sale, For Want of Bidder’ if parties come in other than the owners of the land and offer to pay the taxes and costs, is it possible for the sheriff to give a deed conveying title?

3. When the sheriff offers land for sale for delinquent taxes, must he sell same to the highest bidder, even though the amount of the bid is less than the delinquent tax and the penalties and costs?”

Section 5718, General Code, makes it the duty of the county treasurer to cause foreclosure proceedings to be brought upon each unredeemed delinquent land tax certificate when the same has been properly certified to him as delinquent at the expiration of four years. Said section further provides that 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.”

It is obvious that when a court grants an order of sale the entry will provide for the sale in the manner provided for the sale of real estate on execution. In view of the above, your questions necessitate a consideration of the sections of the General Code which relate to the method of procedure in the sale of real estate on execution.

Sections 11672, et seq., relate to the sale of lands when execution is levied thereon. Of course an appraisalment is required on the sale of lands under execution, but this provision has no application to the foreclosure of tax liens for

the reason that Section 5719 of the General Code provides that such premises shall be ordered sold, without appraisalment.

Section 11697, General Code, provides :

“If lands and tenements levied on, or ordered to be sold, be not sold upon execution, other executions may be issued to sell them.”

It is believed the section last quoted, clearly authorizes alias orders of sales to be issued, which will dispose of your first inquiry.

In considering your second question, your attention is directed to Section 11690, General Code, which provides in substance, that in the sales of real estate on execution or order of sale at any time before the confirmation thereof, the debtor may redeem it from sale by depositing in the hands of the clerk of the court the amount of the judgment upon which such lands were sold, with all costs, including poundage, etc. However, said section last mentioned, refers to the debtor, and is a special provision for his benefit which it is believed does not apply to persons other than the owners of the land in case of a foreclosure of a tax lien.

I do not find any other sections of the General Code which would authorize any person other than the owner of the land, to pay the taxes and costs, and obtain a deed in the absence of a proceeding wherein such parties bid the same off at a public sale. The foregoing suggests a negative answer to your second inquiry.

Considering your third inquiry, it is evident from an examination of the various sections involved, that the law contemplates that such premises shall be sold to the highest bidder, irrespective of the amount of the tax lien.

In my Opinion No. 1209, rendered to you under date of November 19, 1929, it was pointed out that the purchaser takes title to the premises free from encumbrances such as mortgages and tax liens when, of course, all lien-holders are properly made a party to the suit. It was there pointed out that it was necessary for the lien-holders to look to the proceeds of the sale for the satisfaction of their claims the same as any other foreclosure proceedings or sales upon execution.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that :

First, in the event the sheriff offers land for sale in connection with the foreclosure of a tax lien, and the same is not sold for want of bidders, it may be again offered for sale upon the obtaining of an alias order of sale.

Second, there is no provision of law authorizing the sheriff to convey said premises to others than the owners of said land upon the payment of the taxes, penalties and costs.

Third, in such proceedings, it is the duty of the sheriff to sell said lands to the highest bidder, even though the amount of the bid is less than the amount of the delinquent tax and penalties.

Respectfully,

GILBERT BETTMAN,
Attorney General.