

convey the title to said premises to the State of Ohio when the same are delivered.
Said abstract and deeds are being herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1209.

DELINQUENT TAXES—REALTY—OFFICERS DENIED RIGHT TO COM-
PROMISE.

SYLLABUS:

There is no provision of law authorizing any officer to compromise a claim for delinquent taxes and penalties on real estate.

COLUMBUS, OHIO, November 19, 1929.

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

DEAR SIR:—This will acknowledge the receipt of your recent communication which reads:

“Where the county treasurer brings suit to foreclose on a delinquent tax certificate and where the facts show that the real estate liable for the tax, is mortgaged for more than its value, has the county treasurer or prosecuting attorney any authority to compromise in regard to the delinquent taxes, and furthermore, can the delinquent tax be satisfied before the property is resold by the mortgagee making payment, and if so, can the mortgagee be given title to the real estate?”

In the particular instance that I have in mind, a farm of 120 acres was offered for sale for delinquent taxes, and the mortgagees bid \$350, they being the highest bidder. The amount of taxes due with penalties and special assessments amounted to about \$1800, and the mortgagee's claim under the mortgage, amounts to about \$11,000, about \$5,000 which is in excess of the actual value at the present time.

The sale was set aside on the motion of the prosecuting attorney, on the ground that the mortgagee was not a party to the suit. Now the question is, as above set forth: Can a compromise be made whereby the bank as the mortgagee can come in before the farm is resold and discharge the delinquent tax lien for a less amount than stands charged against the property on the tax duplicate?”

In the case you present, you state that the sale was set aside on the motion of the prosecuting attorney on the ground that the mortgagee was not a party to the suit. Inasmuch as you state that the property was worth about six thousand dollars, it is assumed that the fact the mortgagee was not made a party, accounts for the property selling for the sum of three hundred fifty dollars.

Under Section 5718 of the General Code, it is the duty of the Auditor of State to cause foreclosure proceedings to be instituted in the name of the county treasurer

upon each unredeemed delinquent land tax certificate. Said section among other things provides :

“ * * * 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.”

Section 5719 of the General Code, provides that judgment shall be rendered for such taxes and assessments as are found due and unpaid, and for penalty, interest and costs and the court is required by reason of said section to order such premises to be sold without appraisalment. Said section further provides :

“ * * * From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest 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.”

From the foregoing it appears that when the necessary parties are named in such a foreclosure proceeding, the purchaser takes title to the premises free from the encumbrances such as mortgages and tax liens. Of course under the circumstances you mention, the mortgagee not having been made a party, the purchaser would take the land subject to its mortgage. However, when said mortgagee is properly made a party defendant, the purchaser will take the premises free from such encumbrances and the lien-holders will be required to look to the proceeds of the sale for the satisfaction of their claims, the same as in other foreclosure proceedings or sales upon execution. Of course the taxes are the first lien and will be paid out of the proceeds before moneys are distributed to mortgage holders.

Your specific question appears to be whether or not under the circumstances you describe, the mortgagee can compromise the taxes before the property is again offered for sale. Section 5724 of the General Code, defines the method whereby delinquent land may be redeemed and reads as follows :

“All delinquent land upon which the taxes, assessments, penalty or interest have become delinquent, may be redeemed at any time before foreclosure proceedings thereon have been instituted, by tendering to the county treasurer the amount then due and unpaid.”

The section above quoted contemplates tendering to the county treasurer the amounts due and unpaid. There is no provision of law authorizing any county officials to compromise the amount due for taxes. County commissioners are authorized

to compromise claims that are due the county, but the courts have repeatedly held that this section does not authorize the compromising of claims for taxes.

Under the provisions of Section 5721, General Code, the county auditor is authorized to correct the duplicate in cases where taxes are erroneously charged against land, which has, apparently, no application in the circumstances you present.

In specific answer to your inquiry, it is my opinion that there is no provision of law authorizing any officer to compromise a claim for delinquent taxes and penalties on real estate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1210.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES H. MAY
IN THE CITY OF PIQUA, MIAMI COUNTY.

COLUMBUS, OHIO, November 20, 1929.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title covering in-lots 5009 to 5015, inclusive, and in-lots 5034 to 5055, inclusive, in the city of Piqua.

I am disapproving said abstract and returning it herewith for the reason that it does not definitely show the title to said premises to be in Charles H. May, the grantor in the warranty deed which you also inclose.

The abstract shows on page 69 that title to a portion of the premises is in the Third Savings & Loan Company through an administrator's deed executed on March 26, 1915; there is no explanation in the abstract how these premises came into the possession of Charles H. May.

The warranty deed which you submitted is also returned herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1211.

APPROVAL, ABSTRACT OF TITLE TO LAND OF R. E. MILLER IN THE
VILLAGE OF CARROLLTON, CARROLL COUNTY.

COLUMBUS, OHIO, November 20, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval corrected abstract and executed warranty deed relating to the proposed purchase of lots Nos. 92 and 93 in Robert's Second Addition to the village of Carrollton, Ohio, owned of record by R. E. Miller, the title of which lots on the original abstract of title submitted, was the subject of my opinion No. 1131, directed to you under date of October 30, 1929.

An examination of the corrected abstract of title submitted shows that the de-