

The transcript submitted to me contains a finding made by you that this parcel of Ohio Canal lands cannot be leased so as to produce the required annual income.

Inasmuch as it appears from this transcript that there has been a substantial compliance with the requirements of Section 13971 and of the later act above referred to with respect to the publication of a notice of the sale of this property, I am approving such sale and the transcript of your proceedings relating thereto as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

309.

WHITTEMORE ACT, NEW UNDERTAKING—LIEN OF PRIOR
UNDERTAKING — BEGINNING, WHEN — DELINQUENT
TAX PAYMENT—PROPERTY OWNER—LIENHOLDER—
CANCELLATION OF OLD CONTRACT OF RECORD.

SYLLABUS:

1. *Under the provisions of Amended Substitute Senate Bill No. 87, effective February 24, 1937, (known as the Whittemore Act) a property owner (real or personal), or lienholder if against real estate, who has previously entered into a written undertaking for the payment of his delinquent taxes and assessments with which he is chargeable, may enter into a new undertaking whereby and wherein he shall be permitted to pay the principal amount of his unpaid installments of delinquent tax or taxes and assessments, covered thereby, in ten equal annual installments, beginning with the date of execution of such new agreement, providing such new written undertaking is entered into with the county treasurer prior to the 10th day of December, 1937.*

2. *The term "(commencing with the date of such agreement)" as used in Section 16 of Amended Substitute Senate Bill No. 87 refers to the beginning date of the new agreement and not to the date of execution of the original written undertaking entered into under the provisions of any former Act or Acts as set forth in said section.*

3. *When a property owner, or lienholder if against real estate, enters into a new written undertaking for the payment of the principal*

amount of the unpaid installments of his delinquent taxes, as provided in Section 16 of Amended Substitute Senate Bill No. 87, it is necessary that the original written undertaking shall be surrendered to the county treasurer and canceled from record. A new written undertaking shall be entered into as of the date of the commencement of the new agreement. The county treasurer has no authority to endorse the provisions of a new written undertaking on an old written undertaking previously entered into, under the terms of Section 16 of this Act.

COLUMBUS, OHIO, March 22, 1937.

HON. A. C. L. BARTHELMEH, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, which reads as follows:

"We desire your interpretation of certain provisions of Senate Bill No. 87 recently enacted and commonly referred to as the new Whittemore Bill, (although according to the style it is the Thomas-Zoul-Byrne Bill) and for the purpose of discussion, let us assume that 'A' some time during the effective periods of the prior so-called Whittemore Bill was delinquent in a net amount of taxes in the sum of \$100.00 and entered into a Whittemore contract and to date has paid three installments of \$10.00 each, which would leave a balance due on the delinquency of \$70.00 as of the effective date of the new Whittemore Bill.

Query: May 'A' under the new Whittemore Bill enter into a new contract and pay upon the delinquency the sum of \$7.00 per year or is he bound to pay thereunder the sum of \$10.00 per year until the delinquency is paid out in full.

Second: Assuming that 'A' yet owes \$70.00 upon his delinquent taxes, may he and the County Treasurer, subject to the ruling requested in No. 3 hereof, enter into a contract whereby 'A' may continue to pay his delinquency at the rate of \$10.00 per year for seven consecutive years.

Third: Let us assume that 'A' entered into a contract under the prior Whittemore Bill and that his contract is in full force and effect under the provisions of such acts as of the effective date of the new Whittemore Bill. The new Whittemore Bill in substance provides that such outstanding contract as 'A' might hold, shall at his instance be surrendered and cancelled and a modified form of new contract under the new bill entered into between 'A' and the County Treasurer.

Query: Does this situation make it possible and legal for the County Treasurer to simply endorse upon the outstanding contract with 'A' the fact that the same has been cancelled under the provisions of the new bill and to set out in such cancellation thereof, the terms of the new contract?

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Amended Substitute Senate Bill No. 87, passed February 18, 1937, approved by the Governor February 24, 1937, and filed in the office of the Secretary of State February 25, 1937, is an Act providing for the collection of delinquent real estate taxes and assessments, personal property and classified property taxes, for years prior to 1936, by installments and provides for a discount for prompt payment of such taxes. This Act was passed as an emergency measure and went into effect as of February 24, 1937. It provides in part as follows:

"Section 1. Any person, firm or corporation charged with or legally authorized or required by law to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in the year 1936, or any person, firm or corporation holding a lien upon such real property may at any time prior to the tenth day of December in the year 1937 elect to pay the principal sum of such delinquent taxes and assessments as provided in this act.

"Section 2. If, within the time mentioned in Section 1 of this act, such person tenders to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, less penalties, interest and other charges, including interest charges under a prior undertaking entered into pursuant to this act, the county treasurer shall accept and receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges. * * *

"Section 3. Any such person being the owner of such real property may at such times, in lieu of making a tender as authorized by Section 2 of this act, enter into a written undertaking in such form as shall be prescribed by the bureau of inspection and supervision of public offices to pay the full principal amount of such taxes and assessments, so delinquent, less penalties, interest and other charges, (but including interest charges under a prior undertaking entered into pursuant to this act) in ten equal annual installments payable at the time prescribed by law for the payment of the second half of current real

property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of such undertaking. The first installment shall be due and payable upon entering into such undertaking and shall be collected by the treasurer, who shall give a certificate therefor to the county auditor. * * *

“Section 4. Any person electing to pay delinquent taxes by installments as provided in Section 3 of this act, shall thereby undertake in his own behalf and on behalf of all subsequent grantees and transferees of such real estate that the real estate taxes and assessments currently payable during the period covered thereby will be paid when due and that the remaining installments of such delinquent taxes will be paid in nine annual installments at and during the period of collection of the second half of current real estate taxes and assessments, beginning in the year 1937, with interest as hereinbefore prescribed but without penalty or other charge.”

“Section 8. Any person, firm or corporation against whom or which taxes, *other than those upon real estate* specifically as such, have been charged on the delinquent tax list, and duplicates in the year 1936, or prior thereto, pursuant to Section 5694 of the General Code, may at any time prior to the tenth day of December in the year 1937 elect to pay the principal sum of such delinquent personal and classified taxes, as provided in this act. * * *” (Italics, the writer’s.)

“Section 9. If, within the time mentioned in Section 8 of this act, such person tenders to the county treasurer a sum equal to one hundred per centum of the principal sum of such personal and classified property taxes, so delinquent, less penalties, the county treasurer is hereby authorized to receive such amount in full payment of all such taxes and penalties. * * *”

“Section 10. Any such person may at such times, in lieu of making a tender as authorized by Section 9 of this act, enter into a written undertaking, in such form as shall be prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount of such taxes, so delinquent, less penalties, in ten equal annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of such undertaking. * * *”

“Section 16. In the case of a taxpayer who, under the provisions of either Amended Senate Bill No. 42, passed March

30, 1933, approved April 5, 1933, and filed in the office of the secretary of state April 5, 1933, Amended Senate Bill No. 23, passed April 11, 1934, approved April 12, 1934, and filed in the office of the secretary of state April 16, 1934, or Amended Senate Bill No. 105, passed December 7, 1934, approved December 13, 1934, and filed in the office of the secretary of state December 14, 1934, or Senate Bill No. 359, passed September 26, 1935, approved October 1, 1935, and filed in the office of the secretary of state October 3, 1935, elected to enter into an agreement to pay delinquent taxes and assessments in six annual installments, as provided in said acts, and who, pursuant to said agreement, has during the period prior to the effective date of this act paid any of said installments plus interest at the rate of four per centum, shall be entitled to have such interest so paid refunded or credited to his account at the time of making payment of the next installment due under said agreement; and any such taxpayer shall be entitled, on application therefor, to elect to modify such prior agreement so that the principal amount of the unpaid installments of the delinquent tax or taxes and assessments, covered thereby, shall be payable in ten equal annual installments, (commencing with the date of such agreement) instead of in the number of installments and amounts thereby prescribed, upon which election the undertaking heretofore entered into shall be surrendered and cancelled, and a modified undertaking in accordance with such election, but otherwise in conformity to and with the effect of such surrendered undertaking, shall be executed, and the duties and obligations of the taxpayer, the county treasurer and a county auditor, shall be governed thereby."

Amended Senate Bill No. 42, (known as the original Whittemore Act) passed March 30, 1933, approved April 5, 1933, and filed in the office of the Secretary of State April 5, 1933, was the original Act passed by the General Assembly for the collection of delinquent real estate taxes and assessments for years prior to 1932 by installments and for a discount for prompt payment of such taxes. It provided, under Section 3, in part as follows:

"Any such person being the owner of such real property may at such times in lieu of making a tender as authorized by Section 2 of this act, enter into a written undertaking in such form as shall be prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount

of such taxes and assessments, so delinquent, less penalties, interest and other charges, in six annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of such undertaking. The first five said annual installments shall be for ten per centum each of the full original principal amount plus interest as hereinbefore prescribed and the next annual payment shall be for the balance of said principal amount plus interest as hereinbefore prescribed. Such undertaking shall be made in duplicate; one copy shall be retained by such person and the other shall be filed with the county treasurer. The first installment shall be due and payable upon entering into such undertaking and shall be collected by the treasurer, who shall give a certificate therefor to the county auditor. * * *

Amended Senate Bill No. 23, passed April 11, 1934, approved by the Governor April 12, 1934, and filed in the office of the Secretary of State on April 16, 1934, extended the provisions of Amended Senate Bill No. 42 (1933) for another year and provided in addition that "any person, firm or corporation against whom or which taxes, *other than those upon real estate* specifically as such, have been charged on the delinquent tax list and duplicates in the year 1933, or prior thereto, * * * may at any time prior to the first day of September in the year 1934, elect to pay the principal sum of such delinquent *personal and classified taxes* * * *" by tender to the county treasurer a sum equal to one hundred per centum of the principal sum of such personal and classified property taxes, so delinquent, less penalties, * * *" or "in lieu of making a tender as authorized * * *, enter into a written undertaking * * * to pay the full principal amount of such taxes, so delinquent, less penalties, in six annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of such undertaking. The first five said annual installments shall be for ten per centum each of the full original principal amount plus interest as hereinbefore prescribed and the next annual payment shall be for the balance of said principal amount plus interest as hereinbefore prescribed. Such undertaking shall be made in duplicate; one copy shall be retained by such person and the other shall be filed with the county treasurer. The first installment shall be due and payable upon entering into such undertaking and shall be col-

lected by the treasurer, who shall give a certificate therefor to the county auditor. * * *

Amended Senate Bill No. 105, passed December 7, 1934, approved by the Governor December 13, 1934, and filed in the office of the Secretary of State on December 14, 1934, extended the provisions of Amended Senate Bill No. 42, and Amended Senate Bill No. 23, to September 1, 1935.

Amended Senate Bill No. 359, passed September 26, 1935, approved by the Governor October 1, 1935, and filed in the office of the Secretary of State October 3, 1935, extended the provisions of Amended Senate Bill No. 105 to December 31, 1936.

A review of Amended Substitute Senate Bill No. 87 (effective February 24, 1937) shows Sections 1, 2 and 3 provide in part as follows:

“Any person, firm or corporation charged with or legally authorized or required by law to pay *real property taxes and assessments* which have become delinquent at or prior to the August or September settlement in the year 1936, or any person, firm or corporation holding a lien upon such real property may at any time prior to the tenth day of December in the year 1937 elect to pay the principal sum of such delinquent taxes and assessments * * *.” (Italics, writer’s.)

by tendering

“to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, less penalties, interest and other charges, including interest charges under a prior undertaking entered into pursuant to this act * * *

or

“may at such time, in lieu of making tender * * * enter into a written undertaking * * * to pay the full principal amount of such taxes and assessments, so delinquent, less penalties, interest and other charges, * * * in ten equal annual installments * * * with interest at the rate of four per centum per annum, payable annually, from the date of such undertaking. The first installment shall be due and payable upon entering into such undertaking * * *.”

Sections 8, 9 and 10 of Amended Substitute Senate Bill No. 87, provide in part as follows:

“Any person, firm or corporation, against whom or which taxes, *other than upon real estate* specifically as such, have been charged on the delinquent tax list and duplicate in the year 1936, or prior thereto * * * may at any time prior to the tenth day of December in the year 1937 *elect to pay the principal sum* of such delinquent personal and classified taxes * * *.

by

“tender to the county treasurer a sum equal to one hundred per centum of the principal sum of such personal and classified property taxes, so delinquent, less penalties * * *”

or

“in lieu of making a tender * * * enter into a written undertaking * * * to pay the full principal amount of such taxes, so delinquent, less penalties, in ten equal annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, *from the date of such undertaking.* * * * The first installment shall be due and payable upon entering into such undertaking * * *.”

These sections specifically provide that any person, firm or corporation charged with or legally authorized or required by law to pay real property taxes and assessments or against whom or which taxes, other than upon real estate specifically as such (personal and classified) are chargeable, levied, and delinquent may, at any time prior to December 10, 1937, enter into a written undertaking with the County Treasurer to pay such delinquent taxes and assessments in *ten equal annual installments*, providing all current taxes due and payable, are paid, *and that the first such installment shall be due and payable upon entering into such undertaking.*

Section 4 of Amended Substitute Senate Bill No. 87 provides in part as follows:

“A person electing to pay delinquent taxes by installments * * * shall thereby undertake in his own behalf and on behalf of all subsequent grantees and transferees * * * that the *remaining installments* of such delinquent taxes *will be paid in nine annual installments* * * *.” (Italics, the writer’s.)

You will note that this section provides that *the remaining installments of such delinquent taxes are to be paid in nine annual installments*, which, of course, is the number of installments remaining to be paid after the payment of the first installment at the time the written undertaking is entered into by the property owner as provided in this Act.

Again, in Section 16 of Amended Substitute Senate Bill No. 87, I find:

“* * * a taxpayer who * * * elected to enter into an agreement to pay delinquent taxes and assessments in six annual installments * * * shall be entitled, on application therefor, to elect to modify such prior agreement so that the principal amount of the unpaid installments of the delinquent tax or taxes and assessments, covered thereby, shall be payable in ten equal annual installments, (commencing with the date of such agreement) instead of in the number of installments and amounts thereby prescribed, upon which election the undertaking heretofore entered into shall be surrendered and cancelled, and a modified undertaking in accordance with such election, but otherwise in conformity to and with the effect of such surrendered undertaking, shall be executed, and the duties and obligations of the taxpayer, the county treasurer and a county auditor, shall be governed thereby.”

This section of the Act makes it optional with the property owner as to whether or not he desires to “elect to modify such prior agreement,” entered into previous to the effective date of Amended Substitute Senate Bill No. 87. He is not required to do so and may let it stand as is, if he so desires.

In specific answer to your inquiry, it is my opinion that a property owner (real or personal), or lienholder if against real estate, who previously entered into a written undertaking for the payment of his delinquent taxes and assessments with which he is chargeable, under the provisions of Amended Substitute Senate Bill No. 87, may enter into a *new undertaking* whereby and wherein he shall be permitted to pay *the principal amount of his unpaid installments* of delinquent tax or taxes and assessments covered thereby in ten equal annual installments, *beginning with the date of execution of such new agreement*, providing such new written undertaking is entered into with the county treasurer prior to the 10th day of December, 1937.

It is also my opinion that the term “(commencing with the date of such agreement)” as used in Section 16 of Amended Substitute Senate Bill No. 87 refers to the beginning date of the *new agreement*

and not to the date of execution of the original written undertaking entered into under the provisions of any former act or acts.

It is also my opinion that if such property owner or lienholder, if against real estate, enters into a new written undertaking for the payment of the principal amount of the unpaid installments of delinquent taxes, as provided in Amended Substitute Senate Bill No. 87, that it is necessary for his original written undertaking to be surrendered and canceled of record and a new written undertaking entered into as of the date of the commencement of the new agreement. The County Treasurer has no authority to endorse the provisions of a new written undertaking on an old written undertaking previously entered into, under the terms of this Act.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

310.

FORFEITED LAND SALE, PURCHASE AT—DELINQUENT
TAX PENALTY—PURCHASE BY LIEN HOLDER—COSTS
DO NOT FOLLOW LAND—COUNTY TREASURER, COSTS,
GENERAL REVENUE FUNDS.

SYLLABUS:

1. *A person purchasing property at a forfeited land sale cannot take advantage of the provisions of Amended Senate Bill No. 87 and pay the delinquent taxes without paying penalties and interest because a purchaser at a forfeited land sale does not come within the provisions of the Act.*

2. *A lien holder purchasing property at a forfeited land sale cannot take advantage of said Act for the same reason.*

3. *Costs incurred in suits to foreclose delinquent tax liens under Section 5718, General Code, do not follow the lands through to the forfeited land sale for the reason that there is no legislative provision therefor. The county treasurer is the party plaintiff in such a suit and in his official capacity is primarily liable for the costs by him made and although he may obtain a decree of foreclosure and judgment for costs, if he fails to realize on his judgment he must pay the costs by him made from the county general fund.*