

the five years prior to the year in which inquiries and corrections are made, which would be the exact way of stating the opposite rule, but it merely enacts that action under section 5399 in placing omitted taxes on the duplicate in case of bona fide incorrect or incomplete returns shall not go back further than the five years next preceding the years in which the inquiries and corrections provided for in that section and in the next preceding and the next two succeeding sections are made. The section is so phrased and has always been so phrased in the opinion of this department because of the form in which the power of the auditor to inquire is conferred. In a sense it might be said that the auditor must find that a false return has been made before he can proceed at all to inquire under section 5398; and that he must find that an innocent but incorrect return has been made or a bona fide omission to list has occurred before he can proceed at all under section 5399. Undoubtedly in practice the auditor cannot discover what the circumstances may have been in many cases until he has made his inquiries. The legislature could have expressed its intention more clearly by authorizing one inquiry and then providing that in the event the auditor found that the return was false and fraudulent he should add the fifty per cent penalty and go back an indefinite number of years but not beyond the year 1911, but if he found that returns were unintentionally incorrect or incomplete he should not add the penalty and should not go back more than five years. This it is believed is what the legislature was aiming at and in order to make it clear that separate proceedings need not be had for each class of cases, these references from one section to another in the group were placed in the statutes at an early date and have always been there. Their presence being thus accounted for, the inference that the legislature intended the five year limitation which is now mentioned only in 5399 to apply to section 5398 as well because of the form of the words used is overthrown or at least greatly weakened, especially in the face of the fact that the five year limitation was formerly found in both sections together with these cross references.

For the foregoing reasons this department is of the opinion, as above stated, that if the county auditor finds that false and fraudulent returns were made by the decedent he is not limited to the five years preceding the year in which the inquiries and corrections were made in placing on the duplicate such amount of omitted taxes as he believes the estate should pay.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3412.

DELINQUENT LAND TAX—PETITION TO FORECLOSE—CERTAIN DESCRIPTION APPEARING IN SAID LAND TAX CERTIFICATE ALSO MORE MINUTE AND PARTICULAR DESCRIPTION OF SAID REAL ESTATE AS SHOWN BY DEED RECORDS—SHERIFF MAY CONVEY BY MORE PARTICULAR DESCRIPTION RATHER THAN GENERAL DESCRIPTION CARRIED ON TAX DUPLICATE.

It is proper and good practice for a petition to foreclose an unredeemed land tax certificate, under section 5718 G. C., in addition to the description appearing in said certificate, to set out a more minute and particular description of said real estate, as shown by the deed records.

If this is done, the sheriff may convey the real estate by the more particular description rather than the general description carried on the tax duplicate.

COLUMBUS, OHIO, July 28, 1922.

HON. WALTER B. MOORE, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This department acknowledges receipt of your letter of recent date requesting opinion as follows:

“In preparing a petition to foreclose an unredeemed land tax certificate, under section 5718 G. C., would it be proper, in addition to the description appearing in said certificate, to set out a more minute and particular description of said real estate, as shown by the deed records; and, if this were done, could the sheriff convey the real estate by said minute description rather than the general description carried on the tax duplicate?”

Section 5718, General Code, provides that in an action in foreclosure on an unredeemed delinquent land tax certificate “it shall be *sufficient* * * * for the treasurer to allege * * * that the certificate has been duly filed * * *; 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 treasurer need not set forth any other or further special matter relating thereto.” However, in the opinion of this department this statutory permission to file a concise and simplified petition does not prevent the inclusion of other material allegations in such petition. Though this is a special action, and though the pleadings must be conformed to the statute, yet in the absence of any express or implied prohibition to the contrary, allegations which are proper and not required by section 5718 would not be objectionable. From the mere statement that certain allegations shall be “sufficient” and the mere dispensing with the necessity of other allegations, no inference can be drawn against the inclusion of such other allegations as may on practical grounds be found advisable and as may not be prejudicial to the defendant.

Section 5713 must be read in connection with section 5718 and it provides that the action shall be brought in the “same manner as is now or hereafter may be provided by law for foreclosure of mortgages on land in this state.”

Section 5718 itself 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.” These provisions show the practical necessity of procuring a description of the lands and inserting it in the petition, in terms definite enough to enable the sheriff to make a sale and execute a conveyance to the purchaser as required by section 11693 of the General Code.

It is, of course, well known that the description of real property which is carried on the duplicate for taxation purposes and which presumably is carried over into the delinquent land tax certificate made under authority of section 5712 of the General Code and that mentioned in section 5718 of the General Code is very much abbreviated in practice and, except as to city and town lots, whole quarter sections, etc.—in short, in all cases in which the actual description of the property is by metes and bounds, contains no details adequate for a conveyance according to which a marketable title could be passed.

In the judgment of this department it is good practice in all cases where necessary to use in the petition the description of the real estate shown by the deed records of the county. It is further the opinion of this department that in such event the sheriff is authorized to convey real estate by the accurate description in the petition, regardless of the description in the delinquent land tax certificate.

It is, however, the opinion of this department that the petition should allege the description in the land tax certificate and then contain an allegation that the property so described in the land tax certificate is more particularly described as follows, etc. In other words, it would be improper and unsafe in the opinion of this department to ignore the description in the land tax certificate and to use that in the deed records for then it would be possible to join issue on the point that no such land had been returned and certified as delinquent; but if both descriptions are put in the petition, one designated as that found in the unredeemed land tax certificate and the other as a more particular description of the same property, and an allegation is made that both descriptions refer to one and the same tract of real estate, such pleading would, in the opinion of this department, be proper.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3413.

APPROVAL, CONTRACT OF STATE OF OHIO WITH L. C. BICKEL, COLUMBUS, OHIO, FOR REDECORATING OFFICES OF SECRETARY OF STATE AND ATTORNEY-GENERAL AT A COST OF \$1,617.00—SURETY BOND EXECUTED BY GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, July 28, 1922.

HON LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (three copies) between the state of Ohio, acting by the Department of Highways and Public Works, and L. C. Bickel, of Columbus, Ohio. This contract is for redecorating the offices of the Secretary of State, State House, and the offices of the Attorney-General, State House Annex, Columbus, Ohio, and calls for an expenditure of one thousand, six hundred and seventeen dollars (\$1,617.00).

Accompanying said contract is a bond to insure faithful performance, executed by Globe Indemnity Company.

I have before me the certificate of the Director of Finance that there is an unencumbered balance legally appropriated sufficient to cover the obligations of this contract.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,
 JOHN G. PRICE,
Attorney-General.