

199.

DELINQUENT TAXES—LANDS—SEPARATE FORECLOSURE PROCEEDINGS FOR EACH PARCEL NECESSARY.

*SYLLABUS:*

*Proceedings to foreclose the lien for taxes against lands certified as delinquent brought under Section 5718 of the General Code, must be separate in the case of each parcel certified as delinquent.*

COLUMBUS, OHIO, March 16, 1929.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in regard to tax foreclosure proceedings under Sections 5718 and 5719, General Code.

You state that you are now engaged in preparing a printed form of petition which is to be used in the above actions.

You also call attention to an Opinion of the Attorney General, Opinions for 1922, page 372, particularly to the portion of the next to the last paragraph of said opinion which reads as follows:

“This department is of the opinion that in spite of the language in Sections 5712 and 5718, which has been quoted, the true meaning of these sections is that a separate action must be brought against each parcel of land certified as delinquent.”

You then inquire as follows:

“Does this mean that where an allotment company owns say from thirty to one hundred lots upon which the tax has been certified as being delinquent, in such case is it necessary to bring an action against each parcel separately? Or can we combine (for the purpose of making it easier for the sheriff to sell) into each petition and decree groups of say about four or five of these lots?”

The first paragraph of the syllabus of the 1922 Opinion reads as follows:

“Proceedings to foreclose the lien for taxes against lands certified as delinquent brought under Section 5718 of the General Code, must be separate in the case of each parcel certified as delinquent.”

Sections 5718 and 5719, General Code, provide in part as follows:

“Section 5718. It shall be the duty of the county auditor to file with the Auditor of State, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years, and a certified copy thereof shall at the same time be delivered to the county treasurer, and it shall be the duty of the Auditor of State to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate, \* \* \* 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 un-

paid 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. \* \* \* 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. Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty, interest and costs, for the payment of which, the court shall order such premises to be sold without appraisalment. 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. \* \* \* "

The foregoing sections were enacted in 1917 and have not been amended since then.

Said 1922 opinion discusses fully various sections of the General Code in pari materia, and then states as follows:

"Then comes Section 5718 which has already been quoted. Observe that it requires that the county auditor file with the Auditor of State a certificate of each delinquent tract, etc., upon which the taxes, etc., have not been paid for four consecutive years. This certificate is not expressly authorized or required to include all the lands in this situation; that is to say, it would seem that a separate certificate would have to be filed with the Auditor of State for each tract, etc. Yet when the section goes on to provide for the foreclosure proceedings, it stipulates that these shall be brought 'upon each unredeemed delinquent land tax certificate,' and inasmuch as the phrase 'delinquent land tax certificate' is given a meaning in Section 5712, and that meaning, as heretofore stated, imports a single document on which all delinquent lands are listed, it is again arguable that the foreclosure proceedings under Section 5718 shall consist of a single action against all lands originally included in the certificate.

Here again, however, a troublesome question arises. What is meant by the word 'unredeemed' modifying the phrase 'delinquent land tax certificate'? The implication is that the delinquency as a whole has been redeemed. Yet if the certificate is to include all of the delinquent lands, it is hard to imagine a case in which there might be a redemption of all delinquencies.

The meaning of the word 'redeemed' is, however, disclosed by Section 5723, which reads as follows:

'It shall be the duty of the county treasurer, upon receipt by him of all moneys due him for delinquent taxes, assessments, penalty and interest on any tract of land, city or town lot, to enter upon the tax duplicate the word "redeemed," and it shall be the duty of the county auditor, after each settlement period, to revise the record of certified delinquent lands, city or town lots, by writing the word "redeemed" (in the margin provided for that pur-

pose) on all such tracts of land, city or town lots entered "redeemed" upon the treasurer's duplicate.'

This shows that the redemption applies only to the tract on which the taxes, etc., are paid. Section 5724 provides further in this connection 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.'

With Section 5723 this section further discloses the meaning of the word 'redeemed'.

Now, we have Section 5720, which provides as follows:

'No issuance of a delinquent land tax certificate shall be invalid on account of its having been charged on the duplicate in name other than that of the rightful owner, if in other respects it is sufficiently described on the duplicate, and the taxes, assessments, penalty and interest set forth in said certificate were due and unpaid at that time.'

This section obviously imports the existence of a separate delinquent land tax certificate for each tract or lot. From these conflicting and somewhat obscure provisions it is difficult to draw any definite conclusion.

\* \* \*

My predecessor suggested in said Opinion, and it is hereby stated, that Sections 2670 and 2671 of the General Code may be helpful. These sections are a part of a group authorizing an action by the county treasurer to foreclose the state's general lien for taxes on real estate. Said sections provide as follows:

"Section 2670. Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty and costs, for the payment of which the court shall order such premises to be sold without appraisal. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes and assessments, 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. When the lands or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer."

"Section 2671. In such proceedings the county treasurer may join in one action all or any number of lots or lands, but the decree shall be rendered severally or separately, and any proceedings may be severed in the discretion of the court for the purpose of trial, error or appeal, where an appeal is allowed, and the court shall make such order for the payment of costs as shall be deemed equitable and proper."

In considering the foregoing sections, said 1922 Opinion stated:

"Here is express provision for the rendition of a separate or several decree in a case where several lots of lands are authorized to be joined in one action to foreclose. The absence of such a provision in Section 5719 is significant. Under Section 5719 but a single judgment is to be rendered. The practical difficulties in the way of construing Sections 5718 and 5719 as authorizing a

joinder of the proceedings to foreclose the lien on distinct parcels of land, though included in the same delinquent tax certificate, are great. Indeed, a constitutional point may be involved. At any rate, in the absence of language like that found in Section 5721, this department is of the opinion that in spite of the language in Sections 5712 and 5718, which has been quoted, the true meaning of these sections is that a separate action must be brought against each parcel of land certified as delinquent."

As before stated herein, there have been no changes in Sections 5718 and 5719 of the General Code since 1917, and I, therefore, see no reason for changing the construction placed upon said Sections in the 1922 Opinion of the Attorney General. I am, therefore, of the opinion, specifically answering your question, that proceedings to foreclose the lien for taxes against lands certified as delinquent brought under Section 5718 of the General Code, must be separate in the case of each parcel certified as delinquent.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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200.

APPROVAL, NOTES OF NEW RICHMOND VILLAGE SCHOOL DISTRICT,  
 CLERMONT COUNTY—\$37,500.00.

COLUMBUS, OHIO, March 16, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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201.

BOARD OF EDUCATION—EXTENT OF AUTHORITY TO EXPEND  
 MONEY FOR RELIEF OF CHILDREN—GRANGES AND SIMILAR OR-  
 ORGANIZATIONS—MAY USE SCHOOL BUILDINGS FOR MEETINGS IF  
 REASONABLE EXPENSES PAID.

*SYLLABUS:*

1. *By the plain terms of Section 7777, General Code, the authority therein granted to boards of ducation to expend school funds for the purpose therein mentioned extends only to cases where an attendance officer is satisfied that a child compelled by law to attend school is unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services. Such authority extends only to furnishing text-books, and such other personal necessities for the child or persons entitled to his services, and also such medical care in co-operation with the health commissioner of the district,*