

1881.

FORFEITED LANDS—DESCRIPTION PUBLISHED IN NOTICE OF SALE — LANDS, LOTS AND PARTS OF LOTS — SECTION 5754 G. C.—SHOULD BE SAME DESCRIPTION COUNTY AUDITOR REQUIRED TO USE TO COMPILE GENERAL TAX LIST AND TREASURER'S DUPLICATE—SECTION 2583 G. C.

SYLLABUS:

The description of lands, lots and parts of lots published in the notice of sale of forfeited lands, as provided in section 5754, General Code, should be the same as the description the county auditor is required to use in compiling his general tax list and the treasurer's duplicate under the provisions of section 2583, General Code.

Columbus, Ohio, February 20, 1940.

Hon. Hugo Alexander, Prosecuting Attorney,
Steubenville, Ohio.

Dear Sir:

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

“Section 5754 of the General Code of Ohio provides as follows:

“The notice of sale prescribed in Section fifty-seven Hundred and Fifty-one shall be in substance as follows:

FORFEITED LAND SALE

The lands, lots, and parts of lots, in the county of * * * , forfeited to the state for the non-payment of taxes, together with the taxes, assessments, penalties, interest and costs charged thereon, agreeably to law, are contained and described in the following list, viz:’

(Here insert the list)

* * * * *

Section 5754 seems to contemplate that notice for the sale of forfeited land should contain as a description of the land, merely that which appears on the treasurer's duplicate, such as the owner's name, the range, township and section, and entry or entries, * * * the part thereof * * * the number of acres or fraction, the value and amount due.

Kindly render an opinion as to whether or not the descrip-

tion appearing on the treasurer's duplicate is sufficient for the notice of sale of forfeited lands?"

Section 5754, General Code, the first part of which you have correctly quoted in your letter, refers repeatedly to the "list" of lands, lots and parts of lots forfeited to the state and offered for sale by the county auditor for non-payment of taxes and assessments. Since the meaning of "list," as there used, has not been specifically defined by the Legislature, it appears advisable to follow its use through the statutes providing for the taxing of real property beginning with the compiling of the auditor's general tax list and the treasurer's duplicate.

The county auditor is required by section 2583, General Code, to compile and make up in duplicate the lists of the names of the owners of real property in each taxing district in his county "placing separately, in appropriate columns opposite each name, the description of each tract, lot or parcel of real estate" with the valuations of the real estate and improvements thereon. Such lists constitute the auditor's general tax list and the treasurer's general duplicate. Lands upon which taxes, assessments and penalties remain unpaid at two consecutive semi-annual tax settlement periods are defined in section 5705, General Code, to be delinquent lands. The auditor is required annually to make, certify and publish "a list and duplicate thereof of all the delinquent lands in his county," and as provided in section 5704, General Code, "Such delinquent land list and duplicate shall contain the description of the property as it appears on the tax list." Three years after such certification of delinquent lands, provision is made in sections 5718, 5718-1 and 5718-2, General Code, for an analysis of such lands as remain unredeemed on the list. For parcels having valuations sufficiently in excess of the tax liens, delinquent tax land certificates are made and a copy forwarded to the prosecuting attorney for foreclosure proceedings. A list of the lands having insufficient valuations is then published by the auditor and the lands in such list are thereupon declared forfeited to the state as provided by section 5744, *supra*. This list is augmented by lands omitted from foreclosure proceedings at the instance of the prosecuting attorney, as authorized by section 5718-3, General Code, and by lands not sold at foreclosure sale for want of bidders, as provided in sections 5719 and 5744, General Code. The list of forfeited lands is then submitted to the Auditor of State for correction, as provided in section 5750, which reads:

“The auditor of state, annually, shall enter in the book provided for in the next preceding section, all lands forfeited to the state for the non-payment of taxes. The several county auditors, annually, between the first Monday of November and the first day of January, shall make a list of all forfeited lands and lots, and forward it to the auditor of state, who, after comparing it with the record of forfeited lands in his office, and correcting any errors or omissions therein, shall return it to the several county auditors, who shall sell the forfeited lands and lots, agreeably to the provisions of this chapter. Lands and lots so forfeited, which, for any cause have not been so offered, shall be offered for sale under the provisions of this chapter, and if not sold for want of bidders, shall be again advertised and offered for sale by the county auditor, at the next subsequent sales by him made, under this chapter, until such lands and lots are sold.”

The duties of the Auditor relative to the publication of notice and sale of forfeited lands are found in section 5751, which is in part as follows:

“The auditor of each county on receiving from the auditor of state such list of lands, within his county, if the taxes, assessments, penalties, and interest due thereon have not been paid on or before the fifteenth day of January next ensuing, shall cause notice thereof to be advertised once a week for two consecutive weeks prior to the second Monday of March in two newspapers in the English language of opposite politics and of general circulation printed in his county.”

Section 5752, General Code, requires the auditor to “sell the whole of each tract of land as contained in the list” offering each tract separately “beginning with the first tract contained in the list.” Section 5754, General Code, prescribing the form of the notice of sale, is correctly shown in part in your inquiry.

From the foregoing, it is apparent that there is a repeated and consistent use of the word “list.” The original and inclusive list is the auditor’s general tax list which includes all taxable property. In that list real property is “listed in each township, city, village, special district, or separate school district or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot or parcel of real estate.”

The mode of listing or describing real property on the auditor’s general tax list has been fixed by the above provisions. While the Legislature has not seen fit to define the manner of listing real property for each of the remaining lists, such as the foreclosure list and the list of forfeited lands, this omission in itself seems significant. Having provided the type of description to be

used for the auditor's general tax list and having provided that the descriptions in the delinquent land list should be the same, it seems reasonable to continue this method of listing properties in the subsequent lists. The list to be used in the published notice of sale referred to in section 5754, General Code, is the list of forfeited lands as returned corrected by the auditor of state. The same reasoning seems appropriate thereto. It is a list having its origin in the auditor's general tax list without any legislative authority for a change or amplification of the description there used.

In specific answer to your inquiry, it is my opinion that the description of lands, lots and parts of lots published in the notice of sale of forfeited lands, as provided in section 5754, General Code, should be the same as the description the county auditor is required to use in compiling his general tax list and the treasurer's duplicate under the provisions of section 2583, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.