

contract covers the construction and completion of Soapstone Contract in connection with equipment for new chemistry building at Ohio State University, Columbus, Ohio, and calls for an expenditure of eight thousand five hundred and seventy-two and 30/100 dollars (\$8,572.30).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. I am informed that the Controlling Board has advised that Section 12 of House Bill No. 502 of the 87th General Assembly does not apply to the materials and labor covered by the above contract and that the consent of the Controlling Board to the expenditure is therefore unnecessary. In addition you have submitted a contract bond upon which the Commercial Casualty Insurance Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

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

Respectfully,
EDWARD C. TURNER,
Attorney General.

2310.

FORFEITED LANDS—SALE—PROCEDURE DIFFERS FROM DELINQUENT LANDS—SECTIONS 5744, ET SEQ., GENERAL CODE, APPLICABLE.

SYLLABUS:

The procedure prescribed in Sections 5704, et seq., General Code, in regard to the sale of delinquent lands for the nonpayment of taxes is inapplicable to the sale of lands forfeited to the state. The procedure for the sale of lands forfeited to the state for the non-payment of taxes is prescribed by Sections 5744, et seq., of the General Code.

COLUMBUS, OHIO, July 2, 1928.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

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

“A request has been made that this office, representing the county treasurer, institute proper proceedings and offer for sale a certain piece of property in this county, which has been forfeited to the state. May we secure an authorization from the Auditor of State, similar to those issued in case of delinquencies, and proceed in accordance with Chapter 14 of the General Code, entitled Delinquent Lands, or is it imperative that we proceed under Chapter 15 of the General Code entitled Forfeited Lands?”

You state that the piece of property in question has been forfeited to the state and you inquire as to whether authority may be secured from the Auditor of State,

similar to that issued in case of delinquency and proceed in accordance with Chapter Fourteen of the General Code entitled Delinquent Lands, or whether it is imperative that procedure be taken under Chapter Fifteen of the General Code under Forfeited Lands.

Chapter Fourteen of the General Code refers to the publication of lists of land on which tax is delinquent, defines delinquent lands and provides the procedure for the sale thereof, and does not authorize or provide the procedure for the sale of forfeited lands.

Section 5744, General Code, provides that where delinquent lands are offered for sale as provided in Chapter Fourteen, and are not sold for want of bidders, that the lands shall be forfeited to the state.

Section 5748, General Code, provides that lands that have been forfeited to the state for the non-payment of taxes, or otherwise, shall be sold and disposed of by the state agreeably to the provisions of Chapter Fifteen.

Section 5750, General Code, provides for the sale of forfeited lands and reads as follows:

"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 nonpayment of taxes. The several county auditors, once in two years, between the first Monday of September and the first day of October, 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."

Section 5751, General Code, defines the duties of the county auditor relative to publication and sale of said lands and reads as follows:

"The auditor of each county on receiving from the Auditor of State such list of lands within his county, if the tax and penalties due thereon have not been paid on or before the fifteenth day of October next ensuing, shall forthwith cause notice thereof to be advertised once a week for four consecutive weeks in two daily newspapers in the English language of opposite politics and of general circulation printed in his county. If there are not two such daily newspapers in the county, then in two weekly newspapers of opposite politics if there be such, if not then publication in one newspaper is required. Such notice shall describe the lands in the manner they are described on the list furnished by the Auditor of State and state that if the tax and penalties charged on said list are not paid into the county treasury and the treasurer's receipt produced therefor before the time specified in this chapter for the sale of said lands, which day shall be named therein, that each tract, so delinquent on which the taxes and penalties remain unpaid will be offered for sale on the second Monday of December thereafter, at the court house in such county, in order to satisfy such taxes and penalties, and that such sale will continue from day to day until each of such tracts is sold or offered for sale."

Section 5752, General Code, states the time and provides the manner of conducting said sale.

The foregoing sections provide and determine the procedure to be followed in the sale of forfeited lands, and Section 5748, supra, provides that the sale of forfeited lands shall be disposed of agreeably to the provisions of said sections.

The foregoing prescribed procedure is entirely different from the procedure provided by Chapter Fourteen (Sections 5704, et seq., General Code) for the sale of delinquent lands.

In the case of *State ex rel. U. S. Mortgage & Trust Company vs. Godfrey, Auditor*, 62 O. S. 18, at page 21, in construing Sections 2899 and 2900, Revised Statutes, now Sections 5744 and 5746, respectively, prescribing how forfeited lands shall be sold, Davis, Judge, stated as follows:

“It will conduce to clear thinking in this case to note that certain sections of the Revised Statutes cited by the defendant (Secs. 2899 and 2900), as well as all of the other sections included in the same chapter, relate solely to the forfeiture and redemption of lands which have been offered for sale at a delinquent tax sale and were not sold for want of bidders. The procedure for the sale or redemption of forfeited lands is strikingly different from that for delinquent taxes; and the legislation respecting these two classes of tax sales is so carefully distinguished by the Legislature itself, that sections relating to one class cannot be safely relied on in construing the effect of proceedings in the other class.”

It is, therefore, my opinion that the procedure prescribed in Sections 5704, et seq., General Code, in regard to the sale of delinquent lands for the non-payment of taxes is inapplicable to the sale of lands forfeited to the state. The procedure for the sale of lands forfeited to the state for the non-payment of taxes is prescribed by Sections 5744, et seq., of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2311.

HEALTH COMMISSIONER—CITY—EMERGENCY—BORROWING OF
MONEY BY TAXING AUTHORITIES—NOT MANDATORY.

SYLLABUS:

The determination of a city health commission, which, by virtue of a charter provision, has been given all the powers conferred by law and the Constitution of Ohio upon municipal boards of health, that an emergency exists which requires the expenditure of funds in excess of those appropriated for the purpose by the city taxing authority, does not, where it appears that funds are not otherwise available, make it mandatory upon said taxing authority to borrow money for such purpose and issue notes under the provisions of Section 2293-7, General Code.

COLUMBUS, OHIO, July 2, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion, and which reads as follows: