

**OPINION NO. 75-092**

**Syllabus:**

Pursuant to R.C. 5721.18, foreclosure proceedings must be instituted for all delinquent lands within six months after the county auditor has delivered a delinquent land tax certificate to the county prosecuting attorney. If an abutting

landowner desires that foreclosure proceedings be instituted sooner, a county prosecuting attorney may accept a guaranty of court costs and proceed through the normal foreclosure proceedings and sale.

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**To: Donald L. Lane, Preble County Pros. Atty., Eaton, Ohio**  
**By: William J. Brown, Attorney General, December 23, 1975**

Your letter of November 26, 1975 requesting my opinion reads as follows:

"We have many small parcels of land that are delinquent and would not, in all probability, bring in enough cash at a tax sale to cover the average court costs of foreclosure. For that reason, these parcels are placed at the end of the priority schedule on foreclosures.

"Our office has been contracted by several interested abutting landowners who are quite desirous of purchasing these delinquent parcels. They have inquired as to whether, if they were to guaranty the costs of the foreclosure proceeding, the delinquent parcels could be placed on a higher priority, processed through the court, and sold.

"Our research has failed to reveal any statutory prohibitions or support for such a guaranty. Our question then is whether such a guaranty is permissible, and if it is permissible, would such a guaranty constitute a subversion of the priority schedule? If the guaranty is considered a subversion, is it justifiable? Finally, if it is permissible and justifiable, what then is the proper procedure for accomplishing the above-described objectives?"

R.C. 5721.03 states that after the August settlement, the county auditor shall make and certify a list of all lands in his county with delinquent taxes. R.C. 5721.13 requires the county auditor, one year after certification of a list of delinquent lands, to make a delinquent land tax certificate for each parcel upon which the outstanding taxes have not been paid, and to file the original copy of the certificate with the prosecuting attorney.

R.C. 5721.18 reads in pertinent part:

"The prosecuting attorney shall, upon the delivery to him by the county auditor of a delinquent land tax certificate, institute a proceeding in the name of the county treasurer to foreclose the lien of the state, in any court of competent jurisdiction within six months thereafter unless the taxes, assessments, penalty, and charges are sooner paid, and shall prosecute the same to final judgment and satisfaction."

From the foregoing portion of R.C. 5721.18, it is clear that the prosecuting attorney must institute a foreclosure proceeding within six months after delivery to him of a delinquent land tax certificate.

In Boyle v. Public Adjustment and Construction Co., 148 Ohio St. 559 (1947), the Court construed the predecessor of R.C. 5721.18 (G.C. 5718-3) which had a nine-month time limit rather than the current six-month limit. Branch 1 of the syllabus in that case reads as follows:

"1. Under the circumstances set forth in Section 5718-3, General Code [now R.C. 5721.18], it is the duty of the prosecuting attorney of a county, upon the delivery to him by the county auditor of a delinquent land certificate, to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state, in any court of competent jurisdiction within nine months thereafter, unless the taxes, assessments, penalty, interest and charges are sooner paid, and to prosecute the same to final judgment and satisfaction." Id. at 559.

Prior to their repeal on November 18, 1969 [133 Laws of Ohio 936, 961], R.C. 5721.14 to 5721.17, inclusive, allowed the county board of revision, with the approval of the common pleas court, to order that certain land be omitted from foreclosure proceedings instituted by the prosecuting attorney if the board determined that the land could not be sold for a price sufficient to pay the delinquent taxes plus costs of foreclosure. However the repeal of these sections makes the mandate of R.C. 5721.18 and the Boyle case absolute for all delinquent lands. Therefore, regardless of the existence of a guaranty by a possible purchaser, you, as prosecuting attorney, must institute foreclosure proceedings for all delinquent lands within six months after the county auditor has delivered a delinquent land tax certificate to you.

If the abutting landowner wants the property foreclosed sooner than would normally occur within the time limit of R.C. 5721.18, then, the guaranty of court costs might still be involved. Although there is no authority on this precise issue, past Attorney General opinions have considered other methods for payment of court costs in foreclosure proceedings when the sale proceeds are insufficient to pay such costs. In 1932 Op. Att'y Gen. No. 4097 and 1933 Op. Att'y Gen. No. 1519, my predecessor decided that when the proceeds from the sale of delinquent real estate are insufficient to pay the costs of the foreclosure proceeding, the costs may be paid from the unappropriated monies of the general county fund. In 1931 Op. Att'y Gen. No. 3495 and 1937 Op. Att'y Gen. No. 310, it was determined that the county treasurer is primarily liable for the foreclosure costs, although that official may obtain a judgment for the costs against the delinquent property owner. Finally, in 1972 Op. Att'y Gen. No. 122, I concluded that a prosecuting attorney could pay for the costs incident to a foreclosure proceeding with funds appropriated pursuant to R.C. 325.12, or R.C. 305.14 and 305.17.

The general holding of the aforementioned opinions is to allow payment of court costs from funds other than the normal operating budgets of the prosecuting attorney or county treasurer. Since no statutes prohibit your proposal and since the guaranties by abutting landowners would shift the burden of paying court costs from the county officials, I believe these guaranties are permissible. However, even if a guaranty for court costs is in effect, R.C. 5721.18 requires that the land still be sold in the manner provided by law for the sale of land on execution and R.C. 5721.19 would still apply as to the price for which the property must be sold.

If an abutting landowner requests that your office institute foreclosure proceedings earlier than was planned within the six-month time limit of R.C. 5721.18 and offers to guarantee court costs as an incentive to such action, I suggest that you procure the guarantee in writing, stating that the guarantee is in consideration of your action to facilitate the sale of the land, and then proceed with the statutorily prescribed procedures for the foreclosure and sale of delinquent lands contained in R.C. Chapter 5721.

Accordingly, it is my opinion, and you are hereby advised, that, pursuant to R.C. 5721.18, foreclosure proceedings must be instituted for all delinquent lands within six months after the county auditor has delivered a delinquent land tax certificate to the county prosecuting attorney. If an abutting landowner desires that foreclosure proceedings be instituted sooner, a county prosecuting attorney may accept a guaranty of court costs and proceed through the normal foreclosure proceedings and sale.