

And in the case of *State, ex rel. Curren, vs. Rees*, 125 O. S. 578, the Supreme Court affirmed the judgment of the Court of Appeals of Cuyahoga County, which held that the provisions of the Uniform Bond Act must be strictly construed.

It is therefore my advice that you do not purchase these bonds.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1596.

DELINQUENT TAXES—MACHINERY, NOT FIXTURES MAY NOT BE SOLD FOR DELINQUENT REAL ESTATE TAXES ALTHOUGH ASSESSED AS REAL ESTATE.

*SYLLABUS:*

*Machinery and equipment which have been assessed for taxation purposes as real estate, but which as a matter of law are not fixtures, may not be sold by the state for delinquent real estate taxes.*

COLUMBUS, OHIO, September 21, 1933.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“My opinion has been asked recently upon the interpretation of Section 2658 G. C. of Ohio and 5718-3 in connection with the sale of certain machinery and equipment located in a plant in this county.

As a matter of law, this machinery and equipment are not affixed to the realty and are not legally fixtures. However, when the assessment was made for taxes upon this plant, this machinery and equipment was listed and assessed as part of the real estate. It is now desired to sell both the land and the equipment for taxes.

The question is: ‘shall this machinery and equipment be sold as personalty, which it in fact is, rather than follow the section relating to the sale of real estate under which the taxes were assessed and also if it is to be sold under the laws relating to the sale of personalty how should the Auditor of Carroll County fix the amount for the personal taxes and apportionate it between the real estate and machinery and equipment?’”

In your request you state that the machinery and equipment in question are not legally fixtures. In answering your question, I assume that to be a fact.

Section 5322, General Code, defining “real property” and “land” for tax purposes reads as follows:

“The terms ‘real property’ and ‘land’ as so used, include not only land itself, whether laid out in town lots or otherwise, with all things contained therein but also, unless otherwise specified, all buildings,

structures, improvements, and fixtures of whatever kind thereon, and all rights and privileges belonging, or appertaining thereto.”

The statutes regulating the sale of delinquent lands for taxes are sections 5713, et seq., General Code. An examination of these sections, as well as previous sections of the General Code, relative to the publication of delinquent land lists, leads to the conclusion that personal property may not be sold for the payment of delinquent real estate taxes. In fact, the opposite is indicated by section 2658, General Code. This section reads as follows:

“When taxes, *other than those upon real estate specifically as such*, are past due and unpaid, the county treasurer may distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the taxes so remaining due and the costs that have accrued. He shall immediately advertise in three public places in the township where the property was taken the time and place it will be sold. If the taxes and costs accrued thereon are not paid before the day appointed for such sale, which shall be not less than ten days after the taking of the property, the treasurer shall sell it at public vendue or so much thereof as will pay such taxes and the costs.” (Italics the writer’s.)

I am herein expressing no opinion upon the question of whether or not the machinery and equipment in question may or may not be sold in order to satisfy an unpaid personal property tax, if the same had been assessed as such.

In view of the above, and in specific answer to your question, it is my opinion that machinery and equipment which have been assessed for taxation purposes as real estate, but which as a matter of law are not fixtures, may not be sold by the state for delinquent real estate taxes.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1597.

LIQUIDATED CLAIM—UNDER H. B. NO. 94 INCLUDES BONDS ISSUED BY SUBDIVISION IN ACCORDANCE WITH UNIFORM BOND ACT WHEN.

**SYLLABUS:**

*The term “liquidated claims” as defined in sub-section (b) of Section 2 of House Bill No. 94 enacted by the 90th General Assembly, includes bonds issued by a subdivision in accordance with the provisions of the Uniform Bond Act, due and payable prior to January 1, 1933 when in the hands of the person to whom originally issued or in the hands of a holder who acquired title thereto prior to January 1, 1933.*