

determine any such item or items so certified to be uncollectible, they shall certify such finding to the county auditor who shall cause said item or items to be stricken from the cumulative tax list and duplicate.”

It appears from a consideration of the above quoted provisions of Section 5695-1, General Code, that before any item or items of delinquent personal property taxes appearing upon the cumulative list can be stricken therefrom upon a finding of uncollectibility made by the County Board of Revision and the Prosecuting Attorney, such item or items must have appeared on the cumulative tax list and duplicate provided for by this section for a period of five years. It is not sufficient to authorize the County Auditor to strike any item or items of delinquent personal property taxes from such cumulative tax list and duplicate that five years have elapsed from the time that such item or items appeared in the annual delinquent personal property tax list or lists made up in the year 1931 or prior thereto, unless such item or items have been on such cumulative tax list and duplicate for a period of five years.

I am of the opinion, therefore, by way of specific answer to your question, that item or items of delinquent personal property taxes appearing on the cumulative delinquent personal property tax list and duplicate made up by the County Auditor under the provisions of Section 5695-1, General Code, may not be stricken from such cumulative delinquent tax list and duplicate upon a finding of uncollectibility made in the manner provided for by this section, unless such item or items have been on such cumulative personal property tax list and duplicate for a period of five years.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5102.

APPROVAL—CORRECTED ABSTRACT OF TITLE TO LAND IN  
HOCKING TOWNSHIP, FAIRFIELD COUNTY, OHIO—  
EDWARD J. SMITH.

COLUMBUS, OHIO, January 16, 1936.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare,*  
*Columbus, Ohio.*

DEAR MADAM: You recently submitted for my examination and approval a corrected abstract of title relating to a tract of land which is owned of record by one Edward J. Smith in Hocking Township, Fairfield County, Ohio, and which tract of land and the title thereto

were the subject of Opinion No. 5024 on the original abstract of title submitted. The tract of land here in question is more particularly described as follows:

Being a part of the east half of the southeast quarter of Section No. 23, Township No. 14 of Range No. 19, beginning at the north-east corner of said quarter section; thence West along the half section line to a point where the center line of the Lancaster Traction and Power Company's right of way as at present located, intersects said half section line; thence south along the center line of said company's said right-of-way to a point where said center line intersects the south boundary line of said quarter section; thence east along said South boundary line, being the south line of said section, to the south-east corner of said quarter section; thence North along the east line of said quarter section to the place of beginning, containing forty-two (42) acres more or less.

Upon examination of the corrected abstract of title which contains a supplemental abstract of the title of the land within the right of way of the Lancaster Traction and Power Company, I find that Edward J. Smith has a good and indefeasible fee simple title to that part of the above described tract of land which lies outside of the right of way of the Lancaster Traction and Power Company, and that the same is free and clear of all encumbrances except the undetermined taxes on the property for the year 1935. I further find that said Edward J. Smith now has an underlying fee simple title to that part of the above described tract of land which lies within the right of way of the Lancaster Traction and Power Company subject to the easement for railway and traction purposes which the Lancaster Traction and Power Company now owns and holds in and upon such lands. In this connection, I am of the opinion, and so find, that when the use of this property within the right of way of said company is abandoned for railroad and traction purposes the easement for such purposes now owned and held by said company will terminate and that in this event the state of Ohio as the successor in title of said Edward J. Smith will then own and hold an indefeasible fee simple title to that part of the above described tract of land which lies within said right of way.

Upon examination of the warranty deed tendered by Edward J. Smith, I find that the same has been legally executed and acknowledged by said grantor and by Elizabeth Smith, his wife, and that the form of this deed is such that the same is legally sufficient to convey this property to the State of Ohio, the grantee therein named, free and clear of the inchoate dower interest of said Elizabeth Smith and free and clear of all encumbrances except the taxes and assessments on said property which may become due and payable in December, 1935, and thereafter.

As a part of the files relating to the purchase of the above described tract of land, you have submitted to me by letter under date of January 15, 1936, corrected contract encumbrance record No. 8. This contract encumbrance record has been properly executed and the same shows an unencumbered balance in the appropriation account to the credit of your department under Item G-1 Lands, to pay the purchase price of this property, which purchase price is the sum of \$3,600.00. It appears further in this connection from a recital contained in said contract encumbrance record, as well as from the certificate of the Controlling Board which you have submitted, that the purchase of this property has been approved by the Controlling Board and that said Board has released from the appropriation account the money necessary to pay the purchase price of this property.

I am accordingly approving the title of Edward J. Smith in and to the above described property subject only to the exceptions above noted with respect to the undetermined taxes on the property for the year 1935 and to that noted with respect to the easement of the Lancaster Traction and Power Company on that part of the above described land which lies within the right of way of said company. The corrected abstract of title, warranty deed, contract encumbrance record and other files submitted to me relating to the purchase of this property are likewise approved by me, and all of said files are herewith returned to you to the end that a proper voucher covering the purchase price of this property may be prepared by your department and submitted with these files to the Auditor of State for warrant.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5103.

FORECLOSURE SALE—SHERIFF MUST PAY ALL DELINQUENT TAXES, ETC., FROM PROCEEDS, WHEN—RIGHTS OF MORTGAGEE WHO PURCHASES REAL ESTATE DISCUSSED.

*SYLLABUS:*

1. *When real estate is sold in a mortgage foreclosure action, the sheriff must pay from the proceeds of such sale all taxes, penalties, assessments then due, and interest thereon, which are a lien on the real estate sold, at the time of the sale.*
2. *A mortgagee who purchases real estate at a mortgage foreclosure sale, may not under the provisions of Senate Bill No. 359, of the 91st General Assembly, elect to pay one-tenth of the delinquent taxes and assessments on such real estate.*