

5554.

FORFEITED LANDS—SOLD BY COUNTY AUDITOR—PURCHASER SECURES TITLE FREE OF PREVIOUS LIENS.

SYLLABUS:

Where lands which are forfeited to the state for nonpayment of delinquent taxes thereon, under the provisions of section 5744, General Code, are thereafter sold as forfeited lands by the county auditor in conformity with the provisions of sections 5750, et seq., General Code, relating to such sales, the sale so made and the delivery of the auditor's deed pursuant thereto constitute a new and independent source of title to the property in the purchaser and effect a discharge of all previous liens and encumbrances on the property.

COLUMBUS, OHIO, May 19, 1936

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you request my opinion as to the title acquired by a person purchasing land on a forfeited land tax sale made by the county auditor, with respect to mortgages and other liens which may be on the property at and prior to the time the same is forfeited to the state as provided for in section 5744, General Code. Section 5744, General Code, provides that every tract of land and town lot offered for sale in delinquent land tax foreclosure proceedings for the sale of such property for delinquent taxes under the provisions of the chapter of the General Code relating to delinquent lands and the sale thereof, which are not sold in such delinquent land tax foreclosure proceedings, shall be forfeited to the state, and that, thenceforth, all the right, title, claim, and interest of the former owner or owners of the property shall be considered as transferred to, and vested in, the state.

Lands thus forfeited to the state which are not redeemed by the owner by the payment of all of the taxes, assessments, penalties and interest due thereon at the time the property is forfeited to the state, are subject to sale by the county auditor as forfeited lands, in the manner provided by sections 5750, et seq., General Code, pursuant to notice of sale to be made by such officer in the manner and form prescribed by section 5754, General Code.

With respect to the question presented in your communication, it may be noted as a fundamental and established principle of law that where lands forfeited to the state for non-payment of delinquent taxes thereon, are sold as forfeited lands in conformity with the statutory enactments

providing for the sale of such lands, the sale of the lands so made and the delivery to the purchaser of the deed of the county auditor as provided by law, constitute an independent source of title to the land in the purchaser, extinguish all previous title thereto, either legal or equitable, and effect a discharge of all previous liens and encumbrances upon the property. *Kahle v. Nisley*, 74 O. S., 328; *Jones v. Devore*, 8 O. S., 430; *Gwynne v. Niswanger*, 20 Ohio, 564; *Hefner v. Northwestern Mutual Life Insurance Company*, 123 U. S., 309.

In this connection, it may be further noted that section 5757, General Code, provides that if forfeited lands are sold for a greater sum than the amount of the taxes, interest and penalty thereon and the costs of the proceeding, the excess sum so paid shall be retained in the county treasury for payment to the owner of such forfeited lands. And touching the question presented in your communication, it is noted that section 5758, General Code, provides as follows:

“If the county treasurer, upon such demand, is not fully satisfied as to the right of the person demanding, to receive it, if there are several different claimants, he shall commence a civil action by filing a petition of interpleader, in the court of common pleas of the county where the land was sold, wherein he shall make the person or persons claiming the excess, and the state, defendants, and the action shall proceed as other civil actions. The costs of the proceedings shall be paid by the person or persons claiming the excess, as the court shall order. The prosecuting attorney of the county shall attend to the action, in behalf of the treasurer.”

Under the provisions of this section, a mortgagee or other person owning and holding a lien upon the property at the time such property is forfeited to the state for non-payment of delinquent taxes thereon, may make a claim for that part of the moneys realized on the sale of the property at the forfeited land sale which is in excess of the taxes, interest and penalties on the property and in excess of the costs of the proceeding, and have his right thereto determined under the provisions of this section. In an opinion of this office directed to the Prosecuting Attorney of Cuyahoga County under date of March 13, 1933, it was held:

“When forfeited lands are sold for a sum in excess of the taxes, assessments, penalties, interest, etc., against such property and such excess is paid into the county treasury, the county treasurer should not pay such funds to the mortgagee without

legal determination of his right thereto, pursuant to the provisions of section 5758, General Code.”

The observations above made constitute, I believe, a sufficient answer to the questions presented in your communication.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5555.

APPROVAL — BONDS OF SHAKER HEIGHTS VILLAGE
SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$20,000.

COLUMBUS, OHIO, May 19, 1936

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5556.

APPROVAL—BONDS OF CITY OF ROCKY RIVER, CUYAHOGA
COUNTY, OHIO, \$7,000.00.

COLUMBUS, OHIO, May 19, 1936

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5557.

APPROVAL—BONDS OF SHAKER HEIGHTS CITY SCHOOL
DISTRICT, CUYAHOGA COUNTY, OHIO, \$25,000.00.

COLUMBUS, OHIO, May 19, 1936

Retirement Board, State Teachers Retirement System, Columbus, Ohio.