

county treasurers. The county treasurer is not only a "proper" party, but a "necessary" party in this class of cases. Service of summons should be directed to and served upon such officer. It is unnecessary that the State of Ohio, or any officer or board thereof, be made a party defendant in such actions.

1. Answering your first question specifically it is my opinion that in actions for foreclosures or the enforcement of liens or other incumbrances or charges on real property, against which, by the terms of Sections 6071 et seq., General Code, an unpaid assessment appears of record, it is necessary that the treasurer of the county in which such real property is situate be made a party defendant and properly served as provided by law. It is unnecessary that the state of Ohio or any officer or board thereof be made a party defendant.

2. In answer to your second inquiry it is the duty of such county treasurer, upon proper service of summons being made, to file an answer setting forth the facts pertaining to such assessment. The determination of the rights and interests of the several parties is then a matter for the court hearing such action to determine. It is for the court to determine the priority of liens and to order the proceeds of the sale to be paid in accordance with its findings thereon.

As provided in Section 6212-33, supra, "such assessment shall not attach or operate as a lien upon the real property aforesaid, if the business taxed and for which the assessment is paid, is conducted by a person, etc., without the knowledge or assent of the owner of said real property." Obviously, if the court determines that the business taxed was conducted by a person without the knowledge or assent of the owner of said real property no lien attaches and the county treasurer would have no interest or right in the surplus, if any, of the funds derived from the sale of the property. If the court finds that the owner of said real property had knowledge or assented to the business being conducted, it is then for the court to determine what interest, if any, the county treasurer has in the premises. In other words, it is for the court to determine whether or not the lien, as set up by the answer of the county treasurer, attaches.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1255.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN XENIA TOWNSHIP,
GREENE COUNTY, OHIO.

COLUMBUS, OHIO, November 14, 1927.

HON. CHAS. V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted to me under date of November 4, 1927, for my opinion an abstract of title prepared and certified under date of October 19, 1927, by J. A. Finney, an abstracter, of Xenia, Ohio, together with a deed of D. E. Spahr and wife for land situate in Xenia Township, Greene County, Ohio, and more particularly described as:

Being part of Military Survey No. 387 originally for 1,200 acres on the waters of Old Town Run, a branch of the Little Miami River: Beginning at a stone in the south line of John B. Wright's farm; thence N. 28 deg. 36' W. 38.18 rods to a stone; thence S. 58 deg. 4' W. 52.18 rods to a stone in the center of the Xenia and Old Town pike; thence with the center of said pike N. 4 deg. 22' W. 1.13 rods to a stone in the center of said pike; thence N. 38 deg. 4' E. 52.75 rods to a stone; thence N. 51 deg. 45' E. 61.7 rods to an ash tree in the line of James Bryson; thence with the line of said Bryson S. 31 deg. 45' E. 50.13 rods to a stone corner to said Bryson and said Wright; thence with the line of said Bryson S. 61 deg. 30' W. 66.6 rods to the place of beginning, containing 18.21 acres, be the same more or less. Reserving therefrom to the Grantor, his heirs and assigns, the right to use the roadway herein conveyed as a means of ingress and egress.

Being the same premises described as Tract No. 1 in the deed of The City of Xenia, Ohio, to D. E. Spahr, dated May 23, 1922, and recorded in Vol. 127, page 505, Greene County Deed Records.

The land under consideration was acquired by the City of Xenia by deed dated February 28, 1920, and in turn it conveyed said premises to D. E. Spahr by a deed dated May 23, 1922. The abstract contains no reference to the proceedings authorizing the sale of this land and the execution of the deed by M. J. Hartley, its mayor, and T. H. Zell, its auditor. An abstract of the proceedings of the municipality to secure this land and authorize its deed should be furnished.

After an examination of the abstract, I am of the opinion that subject to the above and subject to the following exceptions D. E. Spahr has a good and merchantable title to said premises free and clear from all liens and encumbrances:

1. A reservation in favor of John B. Wright, a former owner, under a deed of October 1, 1887, covering the use of the roadway, conveyed as a part of the land under consideration, to be used as a means of ingress from the rear fields on the farm then owned by said John B. Wright. This reservation is carried through subsequent deeds and is incorporated in the deed which D. E. Spahr proposes to deliver to the State of Ohio.

2. The 1927 taxes, the amount of which is not yet determined.

3. The records of the county auditor show that he has received and is now making up a special assessment duplicate for the improvement of the Springfield and Xenia pike in the sum of \$122.57, or of \$15.59 per annum if paid in instalments.

The deed has been executed by David E. Spahr, one and the same person, as D. E. Spahr and Emma Spahr, his wife, by the terms of which they convey to the State of Ohio, its successors and assigns, the above described real estate. The deed conveys the land free and clear from all encumbrances, except taxes and assessments due and payable in December, 1927, and thereafter. The deed has been acknowledged by David E. Spahr and his wife before a notary public of Greene County on the fifteenth of October, 1927. This deed, when properly delivered, will transfer the title of D. E. Spahr in said land to the State of Ohio, that is, if the abstract later discloses that the City of Xenia proceeded legally in the sale of said land to D. E. Spahr.

I herewith return the abstract and deed.

Respectfully,
EDWARD C. TURNER,
Attorney General.