

imperative if payments are to be continued indefinitely, and it is my suggestion that the situation be called forthwith to the attention of the next Legislature.

Summarizing what has been said, I am of the opinion that the Industrial Commission, because of its statutory duty to make payments from the state insurance fund to beneficiaries, may legally continue payments so long as there is cash to make them without incurring any personal liability for such action. It follows that the order of the commission should be rescinded and payments continued at least until such time as there remains no cash in the state insurance fund contributed by public employers. The need of remedial legislation, however, cannot be overemphasized.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1483.

DELINQUENT LANDS—HOW COSTS OF SERVICE BY PUBLICATION  
IN FORECLOSING STATE'S LIEN FOR TAXES PAID—HOW TITLE  
TO REALTY ACCEPTED BY STATE—STATE'S FEE SIMPLE TITLE  
TO FORFEITED LANDS SUBJECT TO CONDITIONS.

SYLLABUS:

1. *The expense of securing service by publication upon necessary party defendants in an action to foreclose the state's lien for delinquent taxes under the provisions of Section 5718, General Code, may be paid out of the proceeds of the sale of the property as a part of the costs in the action; or such expense may be paid out of the general county fund subject to appropriation therefor by the county commissioners and included in the judgment against the property owner against whom such delinquent taxes have been assessed.*

2. *Under the provisions of Section 18, General Code, as well as independent thereof, the state as a sovereign has authority to receive title to property given to it; but unless some officer or agent of the state has been designated to accept the real property on behalf of the state, such property can be accepted only by act of the Legislature.*

3. *Under the provisions of Section 5744, General Code, lands forfeited to the state for the reason that after offer for sale they cannot be sold as delinquent lands vest in the state by full fee simple title, subject to the right of the former owner to redeem the same in the manner provided for by Section 5746, General Code, and subject to the requirement that such lands shall be sold in the manner required by Sections 5748, et seq., General Code.*

COLUMBUS, OHIO, February 3, 1930.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of a communication over the signature of George S. Tenesy, Assistant Prosecuting Attorney of Cuyahoga County, which communication reads as follows:

“Will you kindly furnish us with an opinion upon the following points:

- (1) Referring to foreclosure actions under G. C., Section 5718, (Sale

of Real Estate for Delinquent Taxes) and when advertising in the legal news is necessary for service of process, how are the bills for this advertising paid—out of what fund?

(2) Referring again to the above class of cases—Is there any method or law under which the State of Ohio may accept a deed to the property without legal process?"

Under the provisions of Section 5713, General Code, the state has the first and best lien for the taxes, assessments and penalties assessed on property certified to the auditor of state as delinquent lands under the provisions of Section 5712, General Code. Section 5713 further provides that if the taxes have not been paid for four consecutive years on property so certified as delinquent, the state has the right to institute foreclosure proceedings thereon, in the same manner as is provided by law for the foreclosure of mortgages on land in this state.

More immediately applicable to the questions presented in your communication, it is noted that under Section 5718 of the General Code, where the taxes, assessments, penalties and interest on lands so certified as delinquent have not been paid for four consecutive years, it is the duty of the Auditor of State to cause foreclosure proceedings to be brought in the name of the county treasurer as to the lots and lands contained in each unredeemed delinquent land tax certificate. As to such foreclosure action, it is provided that it shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate has been duly filed by the county with the Auditor of State that the amount of money appearing to be due and unpaid thereby is due and unpaid and is a lien against the property therein described, and that the prayer of the petition in such action shall be that the court make an order that said property be sold by the sheriff of the county in the manner provided by law for the sale of real estate on execution. In actions of this kind to foreclose liens for the non-payment of delinquent taxes and for the sale of the property against which such delinquent taxes are assessed, all persons having an interest in the land should be made parties to said action. Opinions of the Attorney General for 1928, page 600. If service of summons in such action cannot be made in this state upon any party defendant in the action, or if his appearance is not otherwise entered, it will be necessary to obtain service on such party by publication in the manner provided by Section 11292, General Code. In such case the expenses of such publication, when the proof thereof has been filed, as provided by Section 11296, General Code, will become costs in the case to be paid from the sale of the property.

In this connection it is noted that by Section 5719, General Code, it is provided that the costs in the action shall be first paid out of the proceeds of the sale of the property. However, the primary obligation for the payment of expenses which may be assessed as costs in an action is upon the party incurring the same, and, in a case of this kind, if a sale of the property is not affected in such foreclosure proceeding or if the property does not sell for enough to pay the costs in the case, the county treasurer, as the party plaintiff in such action, would be liable for the expenses incurred by him in obtaining service by publication upon parties defendant in the action. In such case the court, under the provisions of Section 11628, General Code, may enter judgment in favor of the county treasurer, as plaintiff in such action, against the delinquent property owner or otherwise, as the court may adjudge to be right and equitable.

Inasmuch as in such case the county treasurer is acting in his official capacity, expenses incurred by him in obtaining service by publication on the necessary parties defendant in the action are payable out of the general county fund provided for by Section 5625-9, General Code, which fund is created by the general levy for

current expenses authorized and provided for by Sections 5625-4 and 5625-5, General Code. Payment of such expenses out of the county treasury can, of course, only be made when an appropriation of money therefor has been made by the county commissioners in the manner provided by Section 5625-29, General Code. This, I believe, answers the first question presented in your communication.

With respect to your second question, it may be observed that under the provisions of Section 18 of the General Code, as well as independent of the provisions of this section, the State of Ohio as a sovereign state is empowered to receive title to real property which may be donated to it. Title to property conveyed to the state can be accepted only when so provided by law, and unless some statutory provision designates some officer to accept title to property conveyed to the state, such acceptance can be effected only by act of the Legislature.

Touching this question as stated in your communication, it may be further noted that where delinquent lands have been offered for sale, pursuant to the above quoted and other sections contained in the chapter of the General Code relating to delinquent lands, and have not been sold for want of bidders, such lands are thereby forfeited to the state in the manner and for the purposes provided by Sections 5744 et seq., General Code. In such case the state takes title to such land subject to the right of the former owner thereof to redeem the same in the manner provided in Section 5746, General Code, and subject to the duty of selling the same as forfeited lands under the provisions of Sections 5748, et seq., of the General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1484.

APPROVAL, BONDS OF SALISBURY TOWNSHIP RURAL SCHOOL DISTRICT, MEIGS COUNTY—\$1,000.00.

COLUMBUS, OHIO, February 3, 1930.

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

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1485.

APPROVAL, BONDS OF VILLAGE OF BROOK PARK, CUYAHOGA COUNTY, OHIO—\$19,256.74.

COLUMBUS, OHIO, February 3, 1930.

*Industrial Commission of Ohio, Columbus, Ohio.*