

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1045.

FORFEITED LANDS—RIGHT, TITLE, CLAIM, AND INTEREST
—REDEMPTION—AUDITOR'S RIGHT TO PERMIT DITCH
TO BE CONSTRUCTED ACROSS FORFEITED LANDS.

SYLLABUS:

1. *The provision of Section 5744, General Code, to the effect that after lands or lots are forfeited to the state for non-payment of taxes thenceforth all the right, title, claim and interest of the former owner or owners shall be vested in the state, was inserted in the section for the purpose of carrying to the purchaser at forfeited land sale as good a title as the owner or owners of the land or lot had. (Roman, the writer's.)*

2. *The state at no time obtains an absolute, indefeasible title to forfeited lands or lots for the reason that at any time prior to sale, even though such lands or lots have been forfeited to the State, the owner can pay to the county treasurer the taxes, assessments, penalty and interest charged against such lands or lots and the county auditor must under the law, transfer such lands or lots back into the name of the owner or owners. There can be no such thing as an absolute, indefeasible title so long as an equity of redemption remains in some person or persons.*

3. *The most interest that the state can have in lands or lots forfeited to it for non-payment of taxes, is a lien for the taxes, assessments, penalties and interest remaining unpaid.*

4. *There is no county or state official clothed with authority to grant to any person permission to run a drainage ditch across forfeited lands.*

COLUMBUS, OHIO, August 20, 1937.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion County, Marion, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date, as follows:

"A tract of land located in this county has been forfeited to the State of Ohio for non-payment of taxes. Now, an adjoining land-owner wishes to run a drainage ditch across this forfeited parcel. He wishes to obtain the permission to run this ditch across this forfeited parcel from some competent official as a representative of the State, for example, the County Auditor. The question is:

Is there any County or State official who can give him the permission to run his drainage ditch across the forfeited parcel?"

Forfeited lands have grown into a sort of "bugaboo" with many of those who, by reason of their official positions, are required to deal directly with them, and it is not at all strange.

Section 5744, General Code, provides in substance, as follows:

"Every tract of land and lot offered for sale in foreclosure proceedings * * * and not sold for want of bidders and every tract and town lot omitted from foreclosure proceedings and duly advertised as provided in this chapter shall be forfeited to the state. Thenceforth all the right, title, claim and interest of the former owner or owners thereof, shall be considered as transferred to and vested in the state to be disposed of as the General Assembly may direct."

It is the last sentence of the section that creates the fog, viz:

"Thenceforth all the right, title, claim or interest of the former owner or owners shall be vested in the State."

Much trouble had been experienced in years gone by, in carrying to purchasers at forfeited sales a good title to lands and lots purchased by them, and it was the purpose of this sentence to carry as good a title

to the purchaser at forfeited sale as the owner or owners of the land or lot had.

The impression went out that as the State carried the title thereto, such land or lot could not be taxed after it was placed in the forfeited list, and if such land or lot was to be assessed for local improvements, the State was entitled to the statutory notice, but there was no provision of law as to who should receive the notice on behalf of the State.

All this is a misconception, as becomes most patent when we carefully consider the next two succeeding Sections, namely 5745 and 5746, General Code.

Section 5745, General Code, provides as follows:

“The county auditor, annually, shall return by the county treasurer, a separate list of all lands or town lots so forfeited with the description thereof and the amount of taxes, assessments, penalties and interest due thereon, to the auditor of state, and all such lands or lots shall be preserved on the tax list and duplicate until sold or *redeemed, and the taxes and assessments thereon regularly assessed in the name of the state.* Such taxes and assessments shall be returned, annually by the county treasurer as delinquencies and credited to him as other delinquencies in his settlement.” (Italics, the writer’s.)

Thus, it is seen that current taxes are charged against the lands under the forfeited list as delinquent taxes in the name of the State.

This provision makes it apparent that the State does not claim to own the lands and lots outright as the State does not tax property to which it has absolute title. When the futility of such a proposition as the State taxing itself is considered, it just naturally fades out of the picture.

I italicized the word “redeemed” in the above quoted section, and that was for the purpose of making it plain that the State makes no claim to absolute title to forfeited lands. If an equity of redemption rests in any person or persons to any lands or lots on the forfeited list, there can be no such thing as absolute title in the State. This contention is fortified by Section 5746, General Code, Title, “Redemption of Forfeited Lands”:

“If the former owner of a tract of land or town lot, which has been so forfeited, at any time before the state has disposed of such land or lot, shall pay into the treasury of the county in which such land or lot is situated, all the taxes, assessments, penalties and interest due thereon at the time of such forfeiture

with the interest which has since accrued thereon as ascertained and certified by the county auditor, the state shall relinquish to such former owner or owners all claim to such land or lot. The county auditor shall then reenter such land or lot on his tax list with the name of the proper owner."

By securing to the owner or owners of forfeited land the right to redeem at any time before disposal by the State, makes it plain that the State never at any time has a full, complete, indefeasible title to forfeited lands. The most that it can be said to have is a lien for the unpaid taxes, assessments, penalties and interest.

Answering your question specifically, there is no county or state official clothed with authority to grant to the landowner in question, permission to run his drainage ditch across forfeited land. Such permission, if obtained at all, must be gotten from the owner or owners.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1046.

CREATING NEW SCHOOL DISTRICT—OLD BOARD MAY NOT
AUTHORIZE EXPENDITURE OF FUNDS TO PROSECUTE
MANDAMUS, WHEN.

SYLLABUS:

In a case where a county board of education adopted a resolution creating a new school district, in accordance with the provisions of Section 4736, General Code, and after the expiration of the thirty day period for filing a remonstrance, but before the appointment of members of the board of education for the newly created school district, a petition is filed by authority of Section 4696, General Code, with the county board of education, containing the signatures of more than 75% of the electors in the territory proposed to be transferred, requesting a transfer of the school district that was abolished by the action of the county board of education, the board of education of the school district that was abolished is without authority to authorize the expenditure of funds for the employment of counsel to prosecute an action in mandamus to compel the members of the board of education to make the transfer of the school terri-