

In my opinion, a board of education may lawfully, in its discretion, in a proper case where the facts warrant, provide and pay necessary employes to promote the safety of school children in crossing the streets in going to and from school buildings.

Any moneys expended by a municipal corporation for the payment of traffic officers or policemen is expended in pursuance of either inherent or delegated police power. Boards of education are not empowered to expend school funds for that purpose, inasmuch as police power, so far as it involves public safety in the use of the public streets is not inherent in or delegated to boards of education and therefore they cannot lawfully contribute from the funds under their control, to a municipality, to be used for that purpose.

I am therefore of the opinion in specific answer to your questions:

(1) A board of education of a city school district may not lawfully contribute to the municipality wherein it is located, from the school funds under its control, moneys to be used by the municipal authorities in the employment of traffic officers whose duty it should be to assist children in crossing the streets in front of the various school buildings in the city when going to or from school or to or from playgrounds.

(2) The answer to your second question is included in the answer to the first.

(3) A board of education of a city school district may in a proper case, in its discretion, employ persons for the purpose of promoting safety of school children when crossing the streets in front of the school buildings in going to and from school or to and from playgrounds, and may pay for the services of such persons from the general funds of the school district.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5584.

DELINQUENT LANDS—LANDS CERTIFIED FOR FORECLOSURE TO PROSECUTING ATTORNEY—MAY NOT BE RECALLED AND LISTED AS OMITTED LANDS.

**SYLLABUS:**

*After lands have been certified to the prosecuting attorney, as delinquent, for the institution on foreclosure proceedings of said lands, it is the duty of the prosecuting attorney to institute foreclosure proceedings thereon to foreclose the lien of the state for taxes, assessments, penalties*

*and interest. Such lands after being so certified may not be recalled and resubmitted to the board provided for in section 5718-1 of the General Code for the purpose of having said board order the same to be omitted from foreclosure proceedings.*

COLUMBUS, OHIO, May 22, 1936.

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

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“As far back as 1928 certificates of delinquent taxes, assessments, penalties, etc., upon various lands in Wood County were filed with the Prosecuting Attorney under Section 5718 of the General Code of Ohio. Such has continued to the present date and in no case, except in a few instances, where there were buyers interested in the property, was foreclosure instituted by the Prosecuting Attorney. Other lands were omitted from the certified list, as provided under Sections 5718-1 and 5718-2, G. C. and were not certified to the Prosecutor for foreclosure, but were forfeited and a lot of it taken care of as provided by Section 5744 et seq. of the General Code.

We are now in a position where it would be a waste of money and useless to foreclose on a lot of the lands which were certified to my predecessors, as Prosecutor, under section 5718.

It is now the desire of the Commissioners, the County Auditor and the Treasurer to get these lands that were certified to the Prosecutor for foreclosure over on the forfeited list, so that they may be declared forfeited to the State and sold without foreclosure for whatever they will bring.

Is there any way the list of property heretofore certified to the Prosecutor can be recalled and put on the forfeited list, as provided for by Sections 5718-1 and 5718-2 and 5744 et seq.? Or, can such certification to the Prosecutor simply be disregarded and a new procedure had by the above named Board under Section 5718-1 and 2 of the General Code?

We would appreciate a reply thereto in the very near future, for if such is possible we would like to certify a lot of these lands to the forfeited list in June, according to your recent decision No. 5327 given April 4th, 1936.”

The statutory provisions relative to certification of delinquent lands to the prosecuting attorney for foreclosure proceedings, the omitting of delinquent lands from foreclosure proceedings and the instituting of pro-

ceedings to foreclose, are contained in sections 5718, 5718-1 and 5718-3 of the General Code, which sections in so far as are pertinent to your inquiry, read as follows:

“Section 5718.

At the expiration of three years, after certification, the county auditor shall make, in quadruplicate, a certificate, to be known as a delinquent land tax certificate of each delinquent tract of land, city or town lot, or part of lot contained in the delinquent land list, upon which the taxes, assessments, penalties and interest have not been paid, describing each tract of land, city or town lot the same is it is described on the tax list and the amount of taxes, assessments, penalty and interest thereon due and unpaid, and stating therein, that the same has been certified to the prosecuting attorney of the county as delinquent. Such certificate shall be signed by the county auditor, or his deputy, and the original filed with the prosecuting attorney, one copy with the county treasurer, and one copy sent to the auditor of state. \* \* \*

“Section 5718-1.

Before making the certificates provided for in section 5718 of the General Code, the county auditor shall submit the list of lands on the delinquent list and subject to foreclosure, to a board composed of the president of the board of county commissioners, the county auditor and the county treasurer, and if, after investigation, in their judgment and discretion, such board is of the opinion that such list contains property or properties so certified which will not bring upon a sale a sufficient amount of money to pay all taxes, assessments and penalties thereon in arrears, together with costs of foreclosure, such board may order the same to be omitted from the foreclosure proceedings as herein provided; and as to such land so ordered to be omitted, no delinquent land tax certificate shall be made.”

“Section 5718-3.

It shall be the duty of the prosecuting attorney of the county, upon the delivery to him by the county auditor of a delinquent land tax certificate, to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state, \* \* \*

It will be noted that section 5718-1, supra, specifically recites that before making the certificate provided for in section 5718, supra, the county auditor shall submit the list of delinquent lands to a board composed of the president of the board of county commissioners, the county auditor, and the county treasurer, and if such board is of the opinion that such list contains lands which will not bring upon sale a sufficient amount to pay taxes, assessments and penalties, together with costs of foreclosure, such board may order the same to be omitted from foreclosure proceedings.

It is a familiar rule of law that public officers are presumed to have performed all the duties enjoined upon them by statute. In regard thereto, it is stated in Ohio Jurisprudence, Volume 32, page 953, that :

“No doctrine is better established than that the acts of an officer, within the scope of his powers and authority, are presumed to be rightly and legally performed until the contrary appears; that is, the action of a public officer or board, within the limits of the jurisdiction conferred by law, is presumed to be not only valid but also in good faith and in the exercise of sound judgment. Acts done which presuppose the existence of other acts to make them legally operative are presumptive proofs of the latter. The foundation of this rule is that one who is invested with authority by the sovereign, commissioned and sworn to faithfully perform the duties pertaining to such commission, must necessarily be supposed to be acting in conformity thereto; and anyone who claims that the officer was not so acting must show affirmatively that such was the case.”

I assume, therefore, that in the cases to which you refer the county auditor submitted the list of delinquent lands pursuant to the provisions of section 5718-1, supra, and in view of the fact that the lands in question were not omitted from foreclosure proceedings, it would consequently appear that the board was of the opinion that the said lands would upon foreclosure sale bring a sufficient amount of money to pay all taxes, assessments and penalties thereon, together with costs of foreclosure.

It is equally well settled that a public officer having been invested by law with power to determine a question of fact, and having made such determination, his determination is final. On this point, it is stated in Corpus Juris, Volume 46, page 1033 :

“In the absence of statutory authority, an officer in performing a statutory duty which does not involve the exercise of discretion is without the power of amendment; and when the judg-

ment or discretion of an executive officer has been completely exercised in the performance of a specific duty, the act performed is beyond his review or recall, although the statute conferring authority expressly makes his determination discretionary. So the final decisions of public officers are binding upon their successors."

In regard thereto, it is likewise declared in Ohio Jurisprudence, Volume 32, page 934, that :

"If the power to determine a question of fact has been given by law to an officer, his determination is final in the absence of any controlling provision of statute, provided he has not been guilty of an abuse of discretion."

The application of the above rule was also considered in the case of State, ex rel. Weiss, vs. Civil Service Commissioner, 3 O. App. 426, wherein the court held as disclosed by the syllabus :

"Where the commission has once determined that a member of the police force is eligible for promotion and promotion is duly made after competitive examination, it is without power to subsequently reverse its decision with respect thereto, and a subsequent board is bound by such former action."

It must likewise be borne in mind that statutes relating to the sale of delinquent lands must be strictly construed. The rule with reference to the construction of statutes relating to the sale of delinquent lands, is stated in 38 Ohio Jurisprudence, pages 1160 and 1161, which is as follows :

"Section 348.

The rule that taxation statutes are strictly construed applies to laws relating to the sale of land for delinquent taxes, since, as has been correctly held, statutes relating to the sale of delinquent lands are classed with penal laws and must be strictly construed; they must be read without expansion beyond the letter, and without recourse to the equitable rules of interpretation which are permitted in the construction of remedial statutes."

"Section 349.

Substantial compliance with the requisitions of the law with respect to sales or forfeiture of lands for delinquent taxes is es-

sential in order to effect a valid sale to enforce a tax lien, or a forfeiture and sale of the forfeited lands. This means that a tax title can be supported only by proof that the land was properly listed, that taxes became delinquent, and that it was properly advertised and legally sold or forfeited. In other words, a tax purchaser acquires no title, at law or in equity, unless the land has been taxed and a sale conducted according to law."

The above text is supported by the following cases:

Lafferty v. Byers, 5 O. 458;  
 Mathers v. Bull, 6 O. N. P. 45, 9 O. D. N. N. P. 408;  
 Chapman v. Sollars, 38 O. S. 378;  
 Margruder v. Esmay, 35 O. S. 387;  
 Carlisle v. Longworth, 5 O. 368.

Therefore, in light of the foregoing, it would appear, and it is accordingly my opinion, that after lands have been certified to the prosecuting attorney, as delinquent, for the institution of foreclosure proceedings on said lands, it is the duty of the prosecuting attorney to institute foreclosure proceedings thereon to foreclose the lien of the state for taxes, assessments, penalties and interest. Such lands after being so certified may not be recalled and resubmitted to the board provided for in section 5718-1 of the General Code for the purpose of having said board order the same to be omitted from foreclosure proceedings.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5585.

APPROVAL—ABSTRACT OF TITLE, ETC., TO LAND IN THE  
 CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO—MAY  
 HILLS KNISLEY.

COLUMBUS, OHIO, May 22, 1936.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR: There has been submitted for my examination and approval an abstract of title, deed and contract encumbrance record No. 1525, relating to the purchase by the State of Ohio of a parcel of land situated in the city of Columbus, Franklin County, Ohio, and described