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1. FORFEITURE — COUNTY AUDITOR REQUIRED TO PAY OVER TO COUNTY TREASURER PROCEEDS FROM SALE OF FORFEITED LANDS AFTER DEDUCTION OF COSTS PERTAINING TO FORFEITURE AND SALE OF FORFEITED LANDS — EXCEPTION — THOSE PAID UNDER SECTION 5704-3 G.C.
2. WHERE PROCEEDS GREATER THAN AGGREGATE AMOUNT DUE SUBDIVISIONS FOR TAXES, ASSESSMENTS, INTEREST AND PENALTIES AGAINST SAID LAND, COUNTY TREASURER REQUIRED TO RETAIN EXCESS IN TREASURY FOR PROPER OWNER OF FORFEITED LAND — SECTION 5771 G.C.

SYLLABUS:

Under the provisions of Section 5771, General Code, a county auditor is required to pay over to the county treasurer the proceeds from the sale of forfeited lands after the deduction of costs pertaining to the forfeiture and sale of forfeited lands, except those paid under Section 5704-3, General Code. In the event such proceeds are greater than the aggregate amount due the subdivisions for taxes, assessments, interest and penalties against said land, the county treasurer is required to retain the excess in the treasury for the proper owner of the forfeited land.

Columbus, Ohio, August 25, 1944

Hon. Ralph Finley, Prosecuting Attorney
New Philadelphia, Ohio

Dear Sir:

Your request for my opinion reads:

“I am writing you for your opinion relative to the interpretation to be placed upon Section 5757 and 5771 of the General Code relative to the distribution of the proceeds over and above cost and taxes which remain in the Auditor’s hands after forfeiture land sales.

You will note that Section 5757 provides that the excess of the sale proceeds over and above the amount of taxes shall be paid into the County Treasurer to be held by him in the name

of the former owner for a period of six years. Section 5771, as amended, provides in substance that after the costs of sale have been deducted from the proceeds of the sale the remainder thereof is to be distributed to the subdivision which would be entitled thereto. Some of the specific questions which enter into my mind are, does Section 5771 repeal Section 5757 by implication, or is it intended that the money shall be deposited with the Auditor and then distributed after the six year period of time, or does Section 5771 merely refer to a sufficient amount of money such as will cover the costs of sale and taxes, and have nothing to do with the excess over and above that amount?"

It might be noted preliminarily that the 95th General Assembly recently amended various sections of the General Code and enacted supplemental legislation with respect to delinquent and forfeited lands. Section 5757, General Code, to which you have directed attention, was not, however, subjected to any revision, and reads as follows:

"If any of such forfeited lands are sold for a greater sum than the amount of such tax, assessment, interest, penalty, and costs of sale, the county auditor shall charge the county treasurer separately in each case, in the name of the supposed owner, with the excess above such amount. *The treasurer shall retain such excess in the treasury for the proper owner of the forfeited lands, and upon demand by such owner, within six years from the day of sale, shall pay the excess to him.*"

(Emphasis added.)

As amended, effective August 11, 1943, Section 5771, General Code, provides, to-wit:

"The county auditor shall deduct all costs pertaining to the forfeiture and sale of forfeited lands, except those paid under section 5704-3, from the moneys received from the sale of land and town lots forfeited to the state for the non-payment of taxes, and shall pay such costs into the proper fund. The proceeds remaining after payment of such costs shall be distributed by the county auditor to the sub-divisions entitled to participate therein."

In order to observe the change made in the wording thereof, I quote said section as it formerly existed, viz.:

"The county auditors shall apportion to their several funds, and pay over to the county treasurer of the proper county, the amount of moneys received from the sale of lands and town lots forfeited to the state for the non-payment of taxes."

It is significant that prior to its amendment this section made specific reference to the fact that the county auditor was required to pay over to the county treasurer the amount of moneys received from the sale of forfeited lands and to "apportion" the same to the proper funds. As I view it, your inquiry therefore centers around the question as to whether or not, after the deduction of certain costs, the auditor is now obliged to follow a different procedure.

Without going into any detail relative to the functions of a county treasurer I might mention that by virtue of Section 2649, General Code, his office shall be kept open for the collection of real property taxes. Under Section 5746, General Code, notwithstanding that real estate has been forfeited for nonpayment of taxes, the former owner is authorized to redeem the same by paying into the treasury of the county all taxes, assessments, penalties, etc. Furthermore, it is the treasurer who disburses or pays out public moneys of the county on the warrant of the auditor.

With respect to the duties of the county auditor, it should be noted that Section 2567, General Code, which has existed in its present form for many years, provides as follows:

"Except moneys collected on the tax duplicate, the auditor shall certify all moneys into the county treasury, specifying by whom to be paid and what fund to be credited, charge the treasurer therewith and preserve a duplicate of the certificate in his office. Costs collected in penitentiary cases which have been paid by the state or to be so paid, shall be certified into the treasury as belonging to the state."

While not specifically so indicated, it is plain that the court had this section in mind when deciding the case of Kloeb, Auditor, v. Mercer County Commissioners, 4 O.C.C. (n.s.) 565. At page 569 of the opinion appears the following, to-wit:

"The county auditor is not the disbursing officer of the county, that is to say, he is not the payer out of the public moneys of the county; but he is the auditor of the county treasury. Except money arising from the tax duplicate he certifies all moneys into the county treasury and credits the amounts to their respective funds. He keeps an account current with county treasurer, showing all moneys paid into the treasury, when paid, to what account, and to what fund paid; and of all moneys paid out, and from what funds paid out."

With the foregoing in mind I am content to rest on the proposition that when it enacted Section 5771, *supra*, the General Assembly did not intend that the system in effect for administering the financial affairs of the county should be changed to the extent that in the case of the sale of forfeited lands the auditor should pay out or disburse the funds derived from such sale to the subdivisions entitled thereto. I feel that a careful analysis of the language used in this section tends to strengthen this conclusion.

In the last sentence of Section 5771, *supra*, it is provided that said proceeds "shall be *distributed*". I do not construe the word "distributed" as meaning disbursed. Instead, I believe the meaning that should be ascribed thereto is "apportion". In Webster's New International Dictionary a definition of "distribute" is as follows:

"To divide among several or many; to deal out; *apportion*; allot."

It is to be noted that in defining the word "apportion" it is said it means to "distribute". Consequently I think it may be maintained that the two words have substantially the same meaning.

In former Section 5771, it is specifically provided that "the county auditors shall *apportion* to their several funds", etc. Had it been the legislative intent for the auditor to actually pay over the money in his hands to the subdivisions and thereby by-pass the treasurer, it seems to me that the section in question might well have contained the word "disbursed". This word connotes that money is to be paid.

Having arrived at the conclusion it was the legislative intent that money reaching the hands of the auditor from the sale of forfeited lands should be turned over to the county treasurer, who in turn would be authorized to pay the same to the subdivisions entitled to participate therein, I therefore have no difficulty in holding that Section 5757, *supra*, which directs the treasurer to retain the excess, can be given full force and effect. If such excess is not retained for the owner but instead is to be paid over to the subdivisions, then the subdivisions would thereby realize an amount over and above that which was owing on account of unpaid taxes, assessments, penalties, etc. Certainly the General Assembly did not contemplate that said subdivisions should realize more than was actually due.

You suggest in your inquiry that possibly Section 5771 repealed by implication Section 5757. I deem it unnecessary to set forth herein the list of cases in this state to the general effect that the repeal of a legislative enactment by implication is not looked upon with favor. In the instant case I hold that such was not the situation.

Therefore, in specific answer to your inquiry, it is my opinion that: Under the provisions of Section 5771, General Code, a county auditor is required to pay over to the county treasurer the proceeds from the sale of forfeited lands after the deduction of costs pertaining to the forfeiture and sale of forfeited lands, except those paid under Section 5704-3, General Code. In the event such proceeds are greater than the aggregate amount due the subdivisions for taxes, assessments, interest and penalties against said land, the county treasurer is required to retain the excess in the treasury for the proper owner of the forfeited land.

Respectfully,

THOMAS J. HERBERT

Attorney General