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REAL ESTATE SOLD BY SHERIFF RESULTING FROM FORECLOSURE BECAUSE OF DELINQUENT TAXES AND DEED IS PREPARED BY AN EMPLOYEE WHOSE SALARY IS PAID BY THE COUNTY, COSTS FOR MAKING SAID DEED SHOULD BE TAXED AS COSTS IN SAID FORECLOSURE PROCEEDINGS—SAID COSTS NOT TO BE PAID FROM PROCEEDS OF SALE, BUT BY PURCHASER OVER AND ABOVE THE PURCHASE PRICE—§311.17, R.C.

SYLLABUS:

When real estate is sold by the sheriff as a result of a foreclosure of the lien of the state arising from delinquent taxes and the deed for said real estate is prepared and executed by an officer or employee whose salary or *per diem* compensation is paid by the county, the costs for making and executing said deed should, in accordance with Section 311.17, Revised Code, be taxed as costs in said foreclosure proceedings; however, said costs are not to be paid from the proceeds of such sale, but are payable by the purchaser over and above the amount of the purchase price.

Columbus, Ohio, August 16, 1961

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

I have your letter, signed by Assistant Prosecuting Attorney Elwyn V. Jenkins, requesting my opinion, and reading as follows:

“Re:—Revised Code 311.17—Fees of Sheriff

“The Delinquent Tax Department of this office, when selling land on execution for taxes unpaid have, under the above statute and Sub-section (6) thereof, made a charge of \$5.00 for the making and executing of a Deed.

“A situation has now arisen where the purchaser has refused to pay this charge and insists that under the second paragraph of Sub-section (6), this deed charge should be included with the costs of the case. We have always interpreted this law to allow the collection of \$5.00 to them as Court Costs and are anxious to know from your office whether or not, since there seems to be some ambiguity to this section, we are in error.

“Your analysis and opinion as to the procedures under this section will be appreciated.”

Section 311.17, Revised Code, reads in pertinent part as follows:

“For the services specified in this section, the sheriff shall charge the following fees, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor:

“* * * * * * * * *

“(B) In addition to the fee for service and return the sheriff may charge:

“* * * * * * * * *

“(6) Making and executing a deed of land sold on execution, decree, or order of the court, to be paid by the purchaser, five dollars.

“When any of the foregoing services are rendered by an officer or employee, whose salary or per diem compensation is paid by the county the legal fees provided for such service in this section shall be taxed in the costs in the case, and when such fees are collected they shall be paid into the general fund of the county.”

It will be noted that the last paragraph of Section 311.17, *supra*, is not a part of subsection (B) (6) of that section since the sentence which follows (6) ends with a period rather than a comma, or semicolon and the final sentence is directed to a “section” rather than a division of a statute. The final sentence of Section 311.17, *supra*, must, therefore, be considered as being a condition placed upon all of the services set forth in Section 311.17, Revised Code. (This conclusion is further borne out by reading the predecessor to said Section 311.17, former Section 2845, General Code.) As said condition applies to the question raised in your letter, it is apparent that since the deed in question is prepared by the prosecutor’s office for the sheriff’s signature, the \$5.00 fee should be taxed as court costs in the foreclosure action which gave rise to the sale involved.

As to the payment of the court costs assessed in the foreclosure proceedings on liens of the state for taxes against real estate, Section 5721.19, Revised Code, reads in pertinent part as follows:

“From the proceeds of the sale, the cost shall be paid first; the amount found due for taxes, assessments, penalties, interest, and charges shall be paid next; and the amount of any taxes and assessments accruing after the entry of the finding and before

sale shall be paid next. If the amount applicable to any taxes, assessments, penalties, interest and charges is deficient, such taxes, assessments, penalties, interest, and charges shall be deemed satisfied. The balance shall be distributed according to law.”

The above quoted provisions of Section 5721.19, Revised Code, would require the payment of all court costs to be made from the fund received from the sale of the property involved in the foreclosure action. Said provision is obviously a general provision of law dealing with the matter of payment of costs in this type of action. However, said general provision of law is inconsistent with the express provisions of Section 311.17 (B) (6), *supra*, which states in effect that the costs assessed for making and executing a deed in said case are to be paid by the purchaser. This payment is, of course, in addition to the amount which the purchaser must pay for the parcel involved in the sale since it is a distinct item of cost as against the general item, the purchase price.

As to the effect to be given to a special statutory provision which limits or is otherwise in conflict with a general statutory provision, your attention is called to 37 Ohio Jurisprudence, Statutes, Section 150, page 409, which reads as follows:

“As a general rule, general statutory provisions do not control, or interfere with, specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special provision generally operates as an exception to the general provision, which, accordingly, must yield to the former. The special provision has been declared to modify, qualify, limit, restrict, exclude, supersede, control, govern, and prevail over the general provision, although the words of the general act, standing alone, would be broad enough to include the subject to which the more particular provisions relate. The general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.”

In accordance with the above rule of law, it is apparent that the special provisions of Section 311.17 (B) (6), Revised Code, govern to the exclusion of the general provisions for the payment of costs as found in Section 5721.19, Revised Code.

Accordingly, it is my opinion and you are advised that when real estate is sold by the sheriff as a result of a foreclosure of the lien of the state arising from delinquent taxes and the deed for said real estate is prepared and executed by an officer or employee whose salary or *per diem*

compensation is paid by the county, the costs for making and executing said deed should, in accordance with Section 311.17, Revised Code, be taxed as costs in said foreclosure proceedings; however, said costs are not to be paid from the proceeds of such sale, but are payable by the purchaser over and above the amount of the purchase price.

Respectfully,

MARK MCELROY

Attorney General