

1337.

APPROVAL, NOTES OF SENECA RURAL SCHOOL DISTRICT, NOBLE COUNTY, OHIO—\$3,575.00.

COLUMBUS, OHIO, August 4, 1933.

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

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1338.

APPROVAL, BONDS OF VILLAGE OF BAY, CUYAHOGA COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, August 4, 1933.

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

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1339.

DELINQUENT TAXES—AMENDED SENATE BILL NO. 42—APPLICABLE ONLY TO REAL PROPERTY—COUNTY TREASURER NOT AUTHORIZED THEREUNDER TO ACCEPT PROCEEDS OF FORECLOSURE SALE BY SHERIFF AS DELINQUENT TAXES AND NOT AUTHORIZED TO REMIT PENALTIES WHEN.

**SYLLABUS:**

1. *Am. S. B. No. 42, enacted by the 90th General Assembly does not authorize the county treasurer to accept from the sheriff out of the proceeds of a sale in foreclosure of a mortgage, the principal amount of taxes and assessments delinquent prior to the August 1932 settlement with the amount of the current taxes and thereupon to remit the penalties remaining unpaid. The sum of money so to be received by the county treasurer should be determined pursuant to the provisions of Section 5692, General Code.*

2. *Such Am. S. B. No. 42 only extends its provisions to those persons who are charged with real property taxes, their legal representatives or those persons who have been legally authorized pursuant to the provisions of Section 5682, General Code, to pay taxes in behalf of the owner.*

3. *The provisions of such Am. S. B. No. 42 authorize the county treasurer to accept the payment of any taxes and assessments charged on the tax list and duplicate without certain penalties, when the provisions of such act have been properly*

*complied with, whether or not a portion of such taxes and assessments, penalties and interest was assessed for a conservancy district. (§6828-1 to 6828-79, G. C.)*

COLUMBUS, OHIO, August 7, 1933.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Several inquiries have been presented to me by various county prosecutors, all of which involve an interpretation of Am. S. B. No. 42 enacted by the 90th General Assembly. They might be stated thus:

(1) May a sheriff, in distributing the proceeds of a sale in foreclosure, distribute to the county treasurer the amount of the taxes for the current year, together with the principal amount of the taxes delinquent at the time of the August 1932 tax settlement and thereby cause the penalties and interest charged against the real estate so sold in foreclosure to be abated by virtue of the provisions of Am. S. B. No. 42?

(2) Is the county treasurer, by virtue of the provisions of such Am. S. B. No. 42 authorized to receive the current taxes, with the principal amount of delinquent taxes assessed under the Conservancy Act and thereupon to abate the penalty and interest thereon?

The first inquiry has specific reference to Section 1 of Am. S. B. No. 42 enacted by the 90th General Assembly. Such section reads:

“Any person, firm or corporation charged with or *legally authorized* to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in the year 1932, may at any time prior to the February settlement in the year 1934, elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1932 and/or the first half of the year 1933 then due and payable have been paid.” (Italics, the writer’s.)

From a reading of such section, in conjunction with the ordinary journal entry in a foreclosure action, it is evident that the sheriff who has been directed by the court to make the sale is not “any person, firm or corporation charged with” the real property taxes on the real estate being converted into money by him for the purpose of satisfying the liens on the property. However, the answer to the question as to whether he is a person legally authorized to pay real property taxes is not so apparent.

In Section 5692, General Code, it is provided that in the sale of real estate at judicial sale,

“ \* \* \* the court shall order the taxes and penalties, and the interest thereon against such lands, to be discharged out of the proceeds of such sale \* \* \* .”

In the ordinary journal entry in a foreclosure action the order as to the payment of taxes reads:

“ \* \* \* and from the proceeds of such sale he shall pay first: \* \* \* to the treasurer of ..... county such sum as stands charged on

the tax books of ..... county for taxes and assessments, penalties and interest, a lien on the premises herein described \* \* \* .”

In some respects the language of Section 5692, General Code, and the order of court in compliance with its mandate appear to “lawfully authorize” the sheriff to pay such taxes. However, as stated by Doyle, J., in the case of *State ex rel. vs. Lorain*, 220 O. N. P., 392, 395, 12 O. N. P. (N. S.) 636:

“In its general legal sense the word ‘paid’ signifies the satisfaction in money or other thing of value of an obligation due from one to the other.”

It is self-evident that there would be no obligation due from the sheriff to the county treasurer. His contribution to the treasurer is merely a distribution of moneys to which he has no title, in the manner in which the court, whose officer he becomes in making the sale and distribution of proceeds, orders. In other words, the sheriff merely distributes the proceeds of the sale in the manner provided in the journal entry, which is his authority to sell.

The word “pay” is also commonly used to designate the act of discharging an obligation without regard to the consideration of by whom the obligation is owed. In Section 5682, General Code, the legislature has defined the manner by which an owner of real property may authorize another to pay real property taxes, charged by him. Such section reads:

“Each person owning lands, may authorize or consent to the payment by another, of the taxes levied upon such lands. A person so paying such taxes shall first obtain from the owner or owners of such lands a certificate of authority to pay them, signed in the presence of two witnesses, and acknowledged before an officer authorized to administer oaths. Such certificate shall contain an accurate description of the property as shown by the tax duplicate, the amount of the taxes levied thereon, the year for which they were levied, the name of the person authorized to pay them, and the date of the payment thereof.”

Section 5683, General Code, provides that a person when so authorized, shall pay the taxes on another’s property, and thereby maintain a lien on the property for the sum so paid, together with interest at the rate of eight percent per annum, from the date of payment.

Such sections are the only sections of the statute which specifically authorize the payment of taxes on real property by other than the owner or his personal representative.

It is an elemental rule in the interpretation of statutes that the legislative purpose or intent cannot be ignored in the interpretation of a statute. *Cochrel vs. Robinson*, 113 O. S. 526; *Cleveland Trust Company vs. Hickox et al.*, 32 O. App. 69. The legislative purpose of the enactment of such Am. S. B. No. 42 might be deduced from Section 10 of such act, as an inducement for the prompt payment of taxes and assessments and for the purpose of inducing a voluntary payment of delinquent taxes. Section 6292, General Code, supra, clearly requires the discharge of real estate taxes and penalties from the proceeds of a sale in foreclosure. It is thus evident that the legislature could have had no purpose in permitting the sheriff to make a deduction of penalties from his distribution of that

portion of the proceeds of a sale in foreclosure which has been ordered by the court to be distributed to the county treasurer in discharge of a tax and/or assessment lien. Such payment might be of financial advantage to the subsequent lienholders, but could have no peculiar effect of hastening the payment of the funds into the county treasury and re-distribution, to taxing subdivisions and could not have been within the legislative purpose.

I am therefore of the opinion that the legislature in the use of the language:

“Any person \* \* \* legally authorized to pay real property taxes \* \* \* .”

in Am. S. B. No. 42 only authorized the owner or his legal representative or such other person who has been authorized pursuant to the provision of Section 5682, General Code, to pay the delinquent taxes accruing prior to the year 1932, without penalty and did not authorize the sheriff who distributes the proceeds of a sale of real estate in foreclosure to so pay such taxes and/or assessments. I have been informed that the common pleas courts of Cuyahoga and Lucas Counties have arrived at a similar conclusion to that herein expressed, but since neither of such opinions is reported I cannot cite them herein.

The second inquiry might well be stated as:

“Does the language ‘delinquent taxes and assessments’, as contained in Sections 1 to 9 of Am. S. B. No. 42 enacted by the 90th General Assembly include taxes and/or assessments assessed by a conservancy district pursuant to Sections 6828-1 to 6828-9, General Code, known as ‘The Conservancy Act of Ohio?’”

“The Conservancy Act of Ohio” is a particular act for a specific purpose, and as such, its provisions supersede the provisions of general acts which if it were not for the provisions of such particular act would be sufficiently broad to provide for the matters covered in the particular or special act. In such case the courts have held that the particular statute covering a specific subject matter must be read as an exception to the other statute covering the same matter in general terms. *State ex rel vs. Zangerle*, 100 O. S. 414; *State ex rel vs. Connor*, 123 O. S. 310; *Flury vs. Central Pub. House*, 118 O. S. 154; *Perkins vs. Bright*, 109 O. S. 14; *Gas Co. vs. Tiffin*, 59 O. S. 420.

It was clearly the intent of the legislature that the Conservancy Act of Ohio should be considered as a special statute, for, in Section 6828-76, General Code, it specifically provided that any statutes then existing, interfering with the execution of such act, should be inoperative in so far as they affected matters covered by the provisions of such act except as to those appearing in the act reported in 103 O. L. 141. Such act was enacted by the special session of the 80th General Assembly in the year 1914 (104 O. L. 13). It has been urged that since such act was enacted by the legislature as emergency legislation, and contained specific provision for the assessment and collection of the taxes levied for the purposes of such act, the language of Am. S. B. No. 42 could not affect its provisions.

While the language of the Conservancy Act of Ohio is sufficient to render inoperative any earlier enacted provisions of statute which would otherwise affect the right of such body to levy and/or collect a special tax or assessment pursuant to its provisions, no language is contained in such act which would require or authorize such special tax or assessment to be collected by the county treasurer in any other manner than he is authorized to collect other taxes and assess-

ments. It has been held that the county treasurer had no authority to receive a special assessment against real estate without receiving the other special assessments and taxes then due and payable, a lien on the property in like proportions. *State ex rel. Brown vs. Cooper*, 123 O. S. 23, decided November 19, 1930. The legislature in order to more definitely establish such rule, enacted it into a statute. (Section 2655, General Code.)

Such Am. S. B. No. 42 makes no distinction in the purpose for which a tax or assessment may have been levied, but refers to "taxes and assessments which have become delinquent prior to the August settlement in the year 1932." Such act was passed later than the Conservancy Act. If the legislature had the power to, and did authorize the penalty for non-payment of conservancy district taxes to be imposed, it must likewise have the power and authority to remit the penalty thereon. The language of such Am. S. B. No. 42 having authorized the remission of the penalty under the circumstances mentioned in the act, with restriction, that is, authorized, under such circumstances, the remission of the penalty on all taxes and assessments, I am unable to conclude that there was an intent on the part of the legislature that the penalty on taxes and assessments were intended to be excepted. It is a fundamental rule of interpretation of statutes that when there is no ambiguity in the language of an act, a court must derive the meaning of the act from its language. The court has no authority to search for the meaning of a statute from extraneous facts and then interpret otherwise clear and distinct language to have the meaning. The court has no right to construe an ambiguity that is not presented in the language of the statute. *Svetland vs. Miles*, 101 O. S. 501, Syllabus 1; *Smith vs. Bock*, 119 O. S. 101, 103; *Slingluff vs. Weaver*, 66 O. S. 621; *Elmwood Place vs. Schaangle*, 91 O. S. 354, 357; *Stanton vs. Realty Co.*, 117 O. S. 345, 349.

Specifically answering your inquiries, it is my opinion that:

(1) Am. S. B. No. 42, enacted by the 90th General Assembly, does not authorize the county treasurer to accept from the sheriff out of the proceeds of a sale in foreclosure of a mortgage, the principal amount of taxes and assessments delinquent prior to the August 1932 settlement with the amount of the current taxes and thereupon to remit the penalties remaining unpaid. The sum of money so to be received by the county treasurer should be determined pursuant to the provisions of Section 5692, General Code.

(2) Such Am. S. B. No. 42 only extends its provisions to those persons who are charged with real property taxes, their legal representatives or those persons who have been legally authorized pursuant to the provisions of Section 5682, General Code, to pay taxes in behalf of the owner.

(3) The provisions of such Am. S. B. No. 42 authorize the county treasurer to accept the payment of any taxes and assessments charged on the tax list and duplicate without certain penalties, when the provisions of such act have been properly complied with, whether or not a portion of such taxes and assessments, penalties and interest was assessed for a conservancy district. (§§6828-1 to 6828-79, G. C.)

Respectfully,

JOHN W. BRICKER,

*Attorney General.*