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WHERE COUNTY AUDITOR SELLS TRACTS OF LAND FROM LIST OF FORFEITED LANDS, HE IS REQUIRED TO ISSUE A SINGLE CERTIFICATE FOR EACH TRACT SOLD, THE DEED ISSUED UPON PAYMENT OF THE REQUIRED FEE; AND AUDITOR MAY NOT ISSUE A DEED COVERING MORE THAN ONE SUCH TRACT—§§5723.04, 5723.12, R.C.

## SYLLABUS:

Where a country auditor sells tracts of land from the list of forfeited lands maintained under Section 5723.04, Revised Code, he is required under Section 5723.12, Revised Code, to issue a single certificate of sale and a single deed for each tract sold, the deed being issued upon the payment of the required fee; and the auditor may not issue a deed covering more than one such tract.

Columbus, Ohio, August 11, 1961

Hon. Lynn B. Griffith, Jr., Prosecuting Attorney  
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under provisions of O.R.C. 5723.12, a deed fee of \$5.00 must be paid to the auditor before delivery of the auditor’s deed to the purchaser. I can find nothing under the Ohio Attorney General’s Opinion or under any case as to whether or not this deed fee must be charged for each parcel of land purchased or whether the auditor should charge \$5.00 for each deed delivered

where many lots in the same sub-division have been purchased by the same purchaser.

“We are aware of the fact that all parcels must be offered for sale individually, but I am of the opinion that it would be a needless burden on the auditor and the recorder to require a separate deed for each parcel purchased.

“Briefly, my question is this—can the auditor group more than one parcel of land or real estate on his deed and must the \$5.00 deed fee be paid for each item sold or would the \$5.00 fee be paid for just the deed, regardless of the numbers of parcels included thereon.

“I would appreciate a ruling from your office in this matter at your earliest convenience since the problem will arise on June 28, 1961.”

Sections 5723.01 to 5723.19, inclusive, Revised Code, deal with lands forfeited to the state for non-payment of taxes. Under Section 5723.04, Revised Code, the county auditor is required to maintain a list of forfeited lands and to offer such lands for sale annually. Section 5723.06, Revised Code, provides in part :

“The county auditor, on the day set for the annual sale provided in section 5723.04 of the Revised Code shall attend at the courthouse and offer for sale the whole of each tract of land as contained in the list provided for in such section, at public auction, to the highest bidder, for an amount sufficient to pay the taxes, assessments, penalties, interest, and costs which stand against it. He shall offer each tract separately, beginning with the first tract contained in the list. \* \* \*”

Section 5723.12, Revised Code, to which you refer, reads in part :

“The county auditor, on making a sale of a tract of land to any person under sections 5723.01 to 5723.19, inclusive, of the Revised Code, shall give such a purchaser a certificate of sale. On producing or returning to the auditor the certificate of sale, the auditor, on payment to him by the purchaser, his heirs, or assigns, of the sum of five dollars, shall execute and deliver to such purchaser, his heirs, or assigns, a deed, which deed shall be prima-facie evidence of title in the purchaser, his heirs, or assigns. \* \* \*”

It will be noted that each tract contained on the list is sold separately; and in this regard, the first headnote of the case of *Magnennis v. Myers, et al.*, 93 Ohio App., 489, reads :

“Sections 5751 and 5754, General Code, (present Sections 5723.05 and 5723.10, Revised Code) which prescribe procedure preliminary to the sale by the state of land forfeited to it for the nonpayment of taxes, require the publication of the amount of taxes, assessments, penalties, interest and costs remaining unpaid on each separately-taxed unit of land. The words ‘tract,’ ‘lot,’ or part ‘lot,’ as used in Chapter 15 of Title I of Part Second of the General Code, (now Title 57, Revised Code, Chapter 5723., Revised Code) refer to a single, individually-taxed parcel of land appearing on the tax list.” (Emphasis and parenthetical matter added)

At page 492 of that opinion, the court declared :

“It is obvious that, by the use of the words ‘each tract, so forfeited,’ the word ‘tract’ was intended to apply to a lot, if the unit of land forfeited was carried on the tax duplicate as a lot in an allotment, and as such was forfeited. \* \* \* There is no language in this section, nor in Section 5754, General Code, prescribing the form of the notice of sale, which permits the lumping together of a group of lots, their total valuation, and the total of the liens against them. Such a group listing would defeat the purpose of the advertising, which is to inform the prospective buyers of the taxes, assessments, etc., unpaid on each forfeited unit of property carried on the tax lists and duplicates.” (Emphasis added)

The decision in *Magnennis v. Myers*, *supra*, was affirmed by the Supreme Court in 158 Ohio St., 405, where it is stated at page 413 :

“Section 5732 clearly requires the county auditor to ‘offer each tract separately, beginning with the first tract contained in the list.’ Here again the list is the list required to be maintained under Section 5750 and where platted town lots are to be sold the words, ‘each tract,’ must be construed as meaning ‘each lot.’ (Emphasis added)

Referring to the language of Section 5723.12, Revised Code, above, it will be noted that on making a sale of a tract, the auditor shall give a certificate of sale; and that, on presentation of the certificate, a deed is executed and delivered. Accordingly, it would appear that a deed is given for each certificate of sale, and there is no authority for the issuance of a deed covering more than one sale.

This conclusion is further borne out in reading the terms of the law as appearing before its revision by House Bill No. 1 of the 100th General

Assembly, the code revision bill (Effective October 1, 1953). Prior to October 1, 1953, the pertinent language was contained in Section 5762, General Code, and read:

“The county auditor on making a sale of a tract of land to any person under this chapter, shall give such purchaser a certificate *thereof*. On producing or returning to the county auditor the certificate of sale, the county auditor, on payment to him by the purchaser, his heirs, or assigns, of the sum of one dollar and twenty-five cents shall execute and deliver to such purchaser, his heirs, or assigns, a deed *therefor*, in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs, or assigns. \* \* \*” (Emphasis added)

The language of former Section 5762, *supra*, clearly provided that one certificate was given for each sale and that the deed was given for the one certificate. While House Bill No. 1, *supra*, deleted the pertinent words “thereof” and “therefor,” the language should be read as if those words still appeared in the section. In this regard, Section 1.24, Revised Code, enacted as a part of said House Bill No. 1 reads as follows:

“That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments.”

In view of the foregoing, therefore, it is my opinion and you are advised that where a county auditor sells tracts of land from the list of forfeited lands maintained under Section 5723.04, Revised Code, he is required under Section 5723.12, Revised Code, to issue a single certificate of sale and a single deed for each tract sold, the deed being issued upon the payment of the required fee; and the auditor may not issue a deed covering more than one such tract.

Respectfully,

MARK McELROY

Attorney General