

In the second paragraph of your letter which I have quoted above, you say that the landowners have already been assessed in accordance with special benefits. From the information which you have furnished with respect to these proceedings, I am unable to categorically state whether or not this specific amount of damages paid out of the general county ditch fund may be recovered from the proceeds of special assessments. It is sufficient to say that unless these damages were computed as part of the cost of the improvement before determining to proceed therewith at the final hearing under Section 6462, General Code, and considered in making up the assessments as finally adopted, there is clearly no authority at this time to levy an additional assessment to make up this amount.

Respectfully,

JOHN W. BRICKER,
Attorney General.

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DELINQUENT LANDS—TRANSFERRED TO STATE AT FORECLOSURE
SALE—STATE HAS NO RIGHT TO POSSESSION OF OR RENTS
FROM THE PROPERTY.

SYLLABUS:

When lands are "forfeited" to the state by reason of the fact that no bidders were obtained at a sale in foreclosure of the delinquent tax lien against a parcel of property pursuant to the provisions of Sections 5705 et seq. General Code, and become "forfeited lands" the only interest of the state in such lands is that of a holder of legal title thereof, to be disposed of, and the proceeds applied toward the payment of the taxes, assessments, penalty, interest and court costs standing charged against such parcel, and the state has no right to possession of such lands or to the rents arising therefrom, and must account to the "former owner" for any sum received in excess of the amount of such taxes and charges.

COLUMBUS, OHIO, March 11, 1933.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

"On February 25, 1932, this office filed a foreclosure suit to collect delinquent taxes in the sum of \$555.42 against property at No. 2713 East 36th Street, Cleveland, Ohio. In due course, this property was offered for sale by the sheriff, and there were no bidders. Thereafter, in due course, a journal entry was filed, forfeiting said property to the state of Ohio.

For your information, will state that the sheriff's docket disclosed that the property at No. 2713 East 36th Street is a dwelling house and was appraised by the sheriff at \$2100.00. We do not know whether this property is vacant, or, if not vacant, by whom it is occupied. In any event, the house and lot are now the property of the state of Ohio, and any accruing rental or profit should properly go to the state.

We expect to have a number of similar situations arising from time to time, during the coming year and would like to have a ruling from

you as to whether your office or some other branch of the state government will take charge of forfeited properties and manage the same for the state."

Your inquiry arises by reason of the language of the General Code, concerning the subjection of real estate to the lien of the state for real estate taxes. Sections 5705 to 5719-1, both inclusive, of the General Code, provide for the foreclosure of such tax lien and the exposing of the land upon which taxes are a lien, to sale in a manner similar to an execution or foreclosure sale, except as provided in such act. Section 5744, General Code, provides that such lands having been so exposed for sale and being

"* * not sold for want of bidders, * * shall be forfeited to the state. Thenceforth all the right, title, claim, and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the General Assembly may direct."

In Sections 5750 to 5762, General Code, both inclusive, the General Assembly has provided the method of disposing of the real estate so forfeited. Thus, on the second Monday in March next following the forfeiture, the county auditor must offer the lands so forfeited for sale to the highest bidder who bids an amount not less than is sufficient "to pay the taxes, assessments, penalties and interest which stand charged against it." If, at this sale, there are no bidders who are willing to bid such amount the county commissioners "at their regular annual session in June", if, in their opinion, such forfeited land is of less value than such amount, "may order the county auditor" to offer it for sale at his next sale of such lands (second Monday of March)" and sell it to the highest and best bidder therefor, irrespective of the amount of taxes, assessments, penalties and interest due on it. Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes, assessments, penalties and interest that remain after applying the amount thereon for which it was sold."

These sections are all a part of Am. S. B. 326 enacted by the 89th General Assembly. I find no other sections of the General Code authorizing the disposition of such lands in another manner nor do I find any sections defining or authorizing the use of such properties.

The language of Section 5744, *supra*, alone, that is if no other language were contained, would indicate that the legislative intent was to vest the absolute or fee simple title to the forfeited lands in the state of Ohio.

There is an ancient and well established rule of statutory construction which prevents the interpretation of a single section of an act alone. In 3 Coke, 596 it is stated:

"The office of a good expositor of an act of parliament is to make construction on all the parts together, and not of one part by itself; nemo enim aliquam partem vecte intelligere possit antequam totum atque iterum perlegerit."

Such rule has been more recently stated by Crew, C. J. in *Buckman, Auditor vs. State ex rel Board of Education*, 81 O. S. 171, 178-179:

"The object of judicial investigation in the construction of statutes is to ascertain and give effect to the intent of the law making body which enacted it, and the mere literal interpretation ought not to prevail, if apparently opposed to the intention of the legislature enacting it, unless the language employed therein is so plain and unambiguous as to imperatively require it. In Lewis' Sutherland Statutory Construction, Sec. 376, the rule is stated as follows: 'While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words. Words or clauses may be enlarged or restricted to effectuate the intention or to harmonize them with other expressed provisions. Where general language construed in a broad sense would lead to absurdity it may be restrained. The peculiar inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense are they intended to be used as they are found in the act. The sense in which they were intended to be used furnishes the rule of interpretation, and this is to be collected from the context; and a narrower or more extended meaning is to be given according to the intention as thus indicated.'"

The purpose of all interpretation of statutes is to determine the legislative intent, which must be gathered from the entire act and not from a single section or clause of an act. This rule is stated in the third paragraph of the syllabus of *Standard Oil Company vs. Detroit Fidelity & Surety Company*, 24 O. App. 237:

"Legislative intent is only gathered from all provisions of law bearing on subject matter, and not from independent and isolated passages except where such passages reach entire subject-matter of controversy."

Examining, then, the entire act (Am. S. B. 326 enacted by the 89th General Assembly), what title to the property does the state acquire through the forfeiture? Under the provisions of Section 5713, General Code, the state acquires the "first and best-lien" on delinquent lands.

The clear purpose of Sections 5705 et seq. General Code, is to provide a method of subjecting the delinquent lands to the satisfaction of the lien given to the state by Section 5713, General Code. The statute apparently makes the taxes no personal obligation of the owner, but upon that question I express no opinion. The only remedy, apparently, in such act is for the sale of the lands and the application of the proceeds toward the payment of the taxes, assessments, penalty, interest and court costs which have been permitted to become delinquent. (Section 5750-5762, General Code.)

An examination of the act discloses that for the purpose of the enforcement of the lien the legislature has provided a legal action similar in many respects to a foreclosure action. (Sections 5718-3, 5719 and 5719-1, General Code.) Where in a sale arising out of such proceedings the sheriff obtains a bid which he can accept, he is authorized to sell the property subject to the confirmation of the court and from the proceeds pay the taxes and charges mentioned above. Any balance remaining he must pay to the owner. However, if at such sale there are no legal bidders, the legislative remedy departs from that of a mortgage sale, that is, the re-exposing for sale pursuant to an alias order of sale is dispensed with and the property is then "forfeited to the state * * * to be disposed of as the General Assembly may direct."

The legislature is specific in its direction as to the manner of disposition of the forfeited property. It provides that the property shall be sold in the manner described above. While the legislature is specific in Section 5744, General Code, as to the results of the forfeiture to the state: "Thenceforth all the right, title, claim or interest of the former owner or owners thereof, shall be considered as transferred to the state"; yet in Section 5746, General Code, the legislature specifically reserves to the former owner or owners the right of redemption at any time before the actual sale by paying

"into the treasury of the county in which land or lot is situated, all the taxes, assessments, penalties and interest due thereon at the time of such forfeiture, with the interest which has since accrued thereon, as ascertained and certified by the auditor, * *"

Section 5764, General Code, further preserves such right of redemption prior to sale by the state. Such section reads:

"The sale of any tract or lot of land under the provisions of this chapter, on which the taxes and assessments have been regularly paid previous to such sale, is void and the purchaser, his heirs, or assigns, on producing the certificate of sale to the auditor of state, shall have his money refunded to him from the state treasury. The state auditor shall pay it out of the money appropriated for refunding taxes twice or improperly paid."

The effect of such sections is to add an exception to the quantum of estate that passes to the state upon forfeiture that is *except the right of redemption prior to sale*.

The language of Section 5757, General Code, is also inconsistent with the vesting of the absolute title in the state. Such section reads:

"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."

Sections 5764 and 5767, General Code, provide that if the taxes shall have been paid prior to the sale of the property by the state the sale shall be void.

If the legislature, by virtue of the language contained in Section 5744, General Code, had intended to vest the absolute title or even a base or determinable fee in the state of Ohio in all "forfeited lands" it is at least peculiar that it would have enacted Section 5745, General Code, which charges not only the special assessment against such parcel but also the regular taxes which ordinarily would be assessable against the parcel of land if in the hands of a private owner. This seems peculiar, especially in view of the fact that the legislature has, by other provisions of the statute exempted all other lands of the state from general taxation. Such Section 5745, General Code, reads:

"The county auditor, annually, shall return, by the county treasurer, a separate list of all lands or town lots so forfeited, with the description thereof, and the amount of taxes, assessments, penalties and interest due thereon, to the auditor of state, and all such lands or lots shall be preserved on the tax lists and duplicates until sold or redeemed, and the taxes and assessments thereon regularly assessed, in the name of the state. Such taxes and assessments shall be returned, annually, by the county treasurer as delinquencies and credited to him as other delinquencies, in his settlement."

From these statutes the question naturally arises as to the nature of the state's title to "forfeited lands." Is the state the owner of a base or determinable fee? Is the interest of the state similar to that of a mortgagee in possession, or, is the interest of the state more nearly comparable to a mortgage with a special right of sale similar to a covenant of sale upon default, as contained in ordinary deeds of trust in the nature of a mortgage?

A base or determinable fee estate is an estate which terminates upon the happening of an event which may or may not happen without the necessity of a re-entry by the grantor or owner of the reversionary interest. See Thompson on Abstracts and Titles, Section 43; *Zubler vs. Porter*, 98 N. J. L. 444; 27 A. L. R. 822.

If the estate of the state of Ohio is of such nature the state has all the rights therein that the owner of a fee simple would have, until the happening of the contingency, and could use the property as it saw fit, without accountability for waste, until such estate was terminated by the happening of the contingency. *Boye vs. Boye*, 300 Ill. 508; *Landers vs. Landers*, 151 Ky. 206; *Fox vs. Van Fleet*, 160 Ky. 796; *Re Vine Street Cong. Church*, 200 O. D. N. P. 573; 10 R. C. L. 653; 16 O. J. 403.

Is it the intent of the legislature to create such an estate? An examination of the statutes fails to disclose any specific provision for the crediting of the fruits and profits that may arise from the property. Such examination further fails to disclose that any authority has been granted for the payment of the expenses of maintenance and repairs from any fund of the county or state. If the legislature had intended to create such an estate it has left to the conjecture of the executive officers the decision of such question. It is true that the legislature has given to certain bureaus or boards the right to manage state property. Thus, in Section 154-40, General Code, I find the following language:

"* * * In addition to the powers so transferred to it, the Department of Public Works shall have the following powers:

* * * * *

(3) To make contracts for and supervise the construction and repair of buildings under the control of the state government, or any department, office or institution thereof.

* * * * *

(9) To lease unproductive and unused lands or other property under the control of the state government, or any department, office or institution thereof.

* * * * *

(12) To exercise general custodial care of all real property of the state."

The authority of this board with respect to all lands "except canals and public works and institutional lands" has been transferred to the Conservation Council by Section 472-1, General Code. Such section reads:

"The conservation council shall exercise all powers and duties heretofore conferred by law upon the superintendent of public works with respect to the control, management, lease and sale of swamp, marsh, overflow lands and all other lands within the state to which the state has or should have the title, except canals and public works and institutional lands, but no land lease or sale of lands shall be made except upon the written approval of the governor and the attorney general."

This section became effective July 25, 1929, and is a later act than Section 154-40, General Code, which became effective January 2, 1928. If the state has the legal title and right to possession of the property referred to in your request the only state agency that could have the authority to manage it would be the conservation council.

Is the interest of the state that of a mortgagee in possession? The nature of such estate might be briefly described as follows: The mortgagee after the conditions of the mortgage have been broken, may enter into possession of the premises mortgaged, manage the same, and collect the rents, fruits and profits arising therefrom and apply them on the mortgage indebtedness until such debt has been fully satisfied. *Anderson vs. Lanterman & Henry*, 21 O. S. 104; *McArthur vs. Franklin*, 16 O. S. 193; *Muzzy vs. Commissioners*, 2 W. L. J. 426, 10 O. Rept. 133; *Baumgard vs. Bowman*, 31 O. App. 266; *Clegg vs. Fitzgerald*, 25 O. N. P. (N. S.) 383.

The rights and liabilities of a mortgagee in possession after condition broken in the mortgaged property are stated by Mauck, J., in *Baumgard vs. Bowman*, 31 O. App. 266, 270:

"The duties of a mortgagee in possession of the mortgaged property require him to handle his trust estate, that is, the mortgaged property in a provident manner, applying the net proceeds of his operation to the debts in the order of their priority, and when his own debt is paid to restore the trust estate to the mortgagor."

Since the statute makes no provision for the application of the rents, fruits and profits on the taxes and grants no authority for the relinquishment of the estate when such income equals the taxes, etc., charged against the property, it could hardly be said that the legislative intent was to grant the state of Ohio an interest in the property of the nature of that of a mortgagee in possession.

Is the estate granted to the state of Ohio similar to that of a mortgagee after condition broken under a mortgage containing a special power of sale? By virtue of a provision in a mortgage or deed of trust in the nature of a mortgage the mortgagee or trustee after condition broken, may, instead of foreclosing the mortgage, cause such premises to be sold by virtue of the language contained in the indenture and convey good title to the purchaser, divesting the former owner of all his rights therein, including the right of redemption. If the trustee elects to pursue such remedy, or, if by virtue of the terms of his indenture the power of sale is made the exclusive remedy of the mortgagee, he has no power or right to enter into possession, and manage, control or collect the rents or fruits arising from the property. See *Coal & Iron Co. vs. Iron & Steel Co.* 14 O. F. D. 325; *Brisbane vs. Stoughton*, 17 Oh. 482; *Mackenzie vs. Stuber*, 119 O. S. 588.

It should be borne in mind that a mortgage deed, as it is used in Ohio, is a conveyance of property absolute in form but containing a condition or covenant to become void upon the performance of the obligation secured thereby. *Hoffman vs. Mackall*, 5 O. S. 124; *Shaw vs. Walbridge*, 33 O. S. 1; *Slutz & Laure vs. Desenberg*, 28 O. S. 371; *Hurd vs. Robinson*, 11 O. S. 414.

Considering the language of the entire act with reference to its effective purpose that is, of obtaining a more convenient or practical method of subjecting lands upon which the taxes have been permitted to remain delinquent for an unreasonable time to the payment thereof, the apparent legislative intent is to vest the absolute legal title to the forfeited lands in the state of Ohio but to permit the equitable title and right of possession to remain in the former owner until such time as it is divested by sale by the state or until such legal title has been redeemed by the payment of the taxes, assessments, interest, penalties and court costs standing charged against such parcel upon the records of the county within which such property is located. In other words, the legislature has merely provided what to it seemed a better method of exposing the property to sale than by alias orders issued from the court by placing the entire control of such sale in the county auditor of the county in which the premises are located. I do not believe that the language of the act shows the intent of the legislature to divest the former owner of his right of possession until an actual sale has been effected of the lands in question, especially in view of the fact that the statute specifically provides the amount for which the property may be redeemed and further, since in Section 5745, General Code, the delinquent lands are made taxable as though owned by the former owner.

If I am correct in my reasoning the conclusion would follow that no state or county officer has the authority to collect the rents or profits arising from "forfeited lands" and has no authority to bind the state on an obligation for maintenance and repair thereof.

Specifically answering your inquiry it is my opinion that when lands are "forfeited" to the state by reason of the fact that no bidders were obtained at a sale in foreclosure of the delinquent tax lien against a parcel of property pursuant to the provision of Sections 5705 et seq. General Code, and become "forfeited lands", the only interest of the state in such lands is that of a holder of legal title thereof to be disposed of and the proceeds applied toward the payment of the taxes, assessments, penalty, interest and court costs standing charged against such parcel, and the state has no right to possession of such lands or to the rents arising therefrom, and must account to the "former owner" for any sum received in excess of the amount of such taxes and charges.

Respectfully,

JOHN W. BRICKER,

Attorney General.

207.

APPROVAL, CORRECTED ABSTRACT OF TITLE TO LANDS OF EDMUND P. CAPPELL AND CHARLES CAPPELL IN BATAVIA TOWNSHIP, CLERMONT COUNTY, OHIO.

COLUMBUS, OHIO, March 11, 1933.

HON. O. W. MERRELL, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a corrected abstract of title, warranty deed, encumbrance record No. 1374 and letter