

7244

LIENS FOR DELINQUENT TAXES ON PERSONAL PROPERTY—SECTION 5719.04 R. C.—APPLIES ONLY TO LANDS OWNED BY TAXPAYER AT TIME LIEN IS FILED IN RECORDER'S OFFICE.

## SYLLABUS:

The lien on land for delinquent taxes on personal property as imposed by Section 5719.04, Revised Code, applies only to lands owned by the taxpayer at the time the lien is filed in the county recorder's office and not to lands subsequently acquired.

Columbus, Ohio, October 11, 1956

Hon. Bernard T. McCann, Prosecuting Attorney  
Jefferson County, Steubenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I am submitting herewith a question which was referred to my office by the Auditor of Jefferson County, which can be summarily stated as follows:

"Does the lien for personal property taxes as created by the provisions of R. C. Section 5719.04 apply to after acquired property?"

"The facts are as follows: On January 26, 1956 the Auditor filed a delinquent personal property tax claim with the Recorder against one J. R. A. who at that time owned no real estate. On March 20, 1956 J. R. A. acquired lots five (5) and six (6) in Block L Banfield Addition, Toronto, Ohio (Deed Record Volume 336, page 212). This real estate was then sold on July 27, 1956, and the attorney checking the title did not find the personal property tax lien.

"After the transfer of the property the Auditor talked with the Attorney with reference to the payment of the personal property taxes and the attorney now takes the position that no lien attached to the real estate conveyed inasmuch as it was not purchased by the debtor until several months after the lien was filed."

Section 5719.04, Revised Code, requires the county auditor, immediately after each October settlement, to make a tax list and duplicates thereof of all taxes except those upon real estate remaining unpaid. He

is further required to deliver one such duplicate to the treasurer on the first day of December, and the other such duplicate, from which shall first be eliminated the names of persons whose total liability for taxes and penalty is less than one hundred dollars, to be filed by the auditor on the first day of December, annually, in the office of the county recorder. The statute further provides:

“\* \* \* and the same shall constitute a notice of lien and operate as of the date of delivery as a lien on the lands and tenements, vested legal interests therein, and permanent leasehold estates of each person named therein having such real estate in such county.”

The question whether a judgment lien obtained under similar statutory provisions attaches to after-acquired property, has been considered by the Supreme Court in a number of cases. As far back as *Roads v. Symmes*, 1 Ohio, 281, it was held:

“The legal title to the lands in dispute was not vested in the defendant when the judgment was rendered, and before the levy was made he conveyed them to one of the present defendants under whom the other claims. Under these circumstances it is maintained the judgment upon which the execution issued, never attached as a lien upon these lands. And this is the opinion of the court.”

In the later case of *Stiles v. Murphy*, 4 Ohio, 92, it reaffirmed the principle that such lien attaches to property *in praesenti* but not *in futuro*, and could not be asserted against after-acquired lands which had been aliened by the debtor before levied on. Later, in *Smith v. Hogg*, 52 Ohio St., at 532, it again declared:

“It is settled law in this state, that a judgment without a levy does not become a lien on after-acquired lands. As to such land the judgment only becomes a lien by the levy of an execution issued upon it.”

In the recent case of *Bank of Ohio v. Lawrence*, 161 Ohio St., 543, it appears that a bank, in 1948, filed a certificate of judgment pursuant to Section 2329.02, Revised Code (G. C. 11656) and later sought to enforce the judgment lien against land acquired by the judgment debtor in 1950. The court rejected the bank's claim of lien against such subsequently acquired property on the ground that the judgment debtor had no interest whatsoever in the property at the time its action was instituted, having previously conveyed the same to the defendants who were purchasers of the property. The syllabus in that case reads:

“The filing of a certificate of a judgment in the office of the Clerk of the Common Pleas Court in accordance with Section 11656, General Code (Section 2329.02 Revised Code) does not create a lien on after-acquired land of the judgment debtor, unless the certificate is refiled after the acquisition of such property and before disposition.”

I fail to find any substantial distinction in principle, between the provisions of Section 2329.02 which makes the judgment a lien upon the lands of the judgment debtor from the time of the filing of the certificate of judgment with the clerk of the court of common pleas, and the provisions of Section 5719.04 which make the tax lien operative upon the lands of the taxpayer from the date of its filing in the office of the county recorder. Specifically, there is also reliable authority that a tax lien does not attach to after-acquired property. In the Federal case of *Tampa v. Commercial Building Company*, 54 Fed. (2d) 1057, the Circuit Court of Appeals held a lien for delinquent personal property taxes inapplicable to subsequently acquired property. The very language of the statute, which limits the lien to operation as such “as of the date of delivery” of the duplicate to the county recorder, defeats any contrary contention. The text in 84 *Corpus Juris Secundum*, page 1185, similarly reads:

“A statute imposing a lien on all property of the taxpayer during a tax year for any tax which may be assessed that year does not impose a lien on property acquired during a subsequent tax year for the tax of a previous year. A statute imposing a tax lien on the property assessed does not impose a lien on subsequently acquired property.”

I cannot be unmindful of the general rule of statutory construction that statutes creating liens are in derogation of the common law and as such are to be strictly construed as to the property and persons to whom applicable. 25 *Ohio Jurisprudence*, page 38. In the light of this principle and the settled law on this question by our highest tribunal I am impelled to the conclusion that the lien on land for delinquent taxes on personal property, as imposed by Section 5719.04, Revised Code, applies only to lands owned by the taxpayer at the time the lien is filed in the county recorder’s office and not to lands subsequently acquired.

Respectfully,

C. WILLIAM O’NEILL  
Attorney General