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FORFEITED LAND LIST—NO AUTHORITY TO SUBSEQUENTLY TRANSFER SUCH LANDS TO FORECLOSURE LIST—UNREDEEMED LANDS ON FORFEITED LAND LIST MUST BE SOLD—SECTION 5752 G.C.—IF VALUE LESS THAN AMOUNT OF TAXES, ASSESSMENTS, PENALTIES AND INTEREST DUE, AFTER OFFERED FOR SALE, SUCH LANDS MAY BE SOLD TO HIGHEST BIDDERS—SECTION 5755 G.C.

SYLLABUS:

After lands have been placed on the forfeited land list there is no authority for transferring such lands to the foreclosure list. Unredeemed lands on the forfeited land list must be sold as provided in Section 5752, General Code, if possible. If found to be of value less than the amount of taxes, assessments, penalties and interest due after having been offered for sale as provided in Section 5752, General Code, such lands may be sold to the highest bidders as provided in Section 5755, General Code.

Columbus, Ohio, April 15, 1942.

Hon. A. C. L. Barthelmeh, Prosecuting Attorney,
Canton, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

“Recently a group of lands in Stark County were forfeited to the state of Ohio and offered for sale on the second Monday of March as provided by law. Certain of these properties did not sell by reason of lack of bidders.

Is it proper to bring tax foreclosure proceedings against certain of these properties or must they be disposed of only as provided by Section 5755 of the General Code?

Likewise, would it make any difference if in some of these we are able to sell the same at such foreclosure action for the full amount of the taxes, assessments and costs?”

Three methods have been provided for placing lands on the forfeited land list. Section 5718-1, General Code, authorizes the president of the board of commissioners, the auditor and treasurer as a board to order the omitting of such lands from the foreclosure list as, in their opinion, will not bring upon sale an amount sufficient to pay all past due taxes, assessments and penalties and the costs of foreclosure. Section 5718-3, General Code, authorizes the prosecuting attorney, upon making a

similar determination, to transfer lands from the foreclosure list to the forfeited land list. If a foreclosure action is had, any lands which are not sold for want of bidders, if not successively offered for sale, are forfeited by operation of Section 5744, General Code.

All unredeemed lands on the forfeited land list are to be offered for sale by the county auditor as provided in Section 5748, et seq., General Code. The procedure to be followed in offering forfeited lands for sale is found in Section 5752, General Code, which is as follows:

“The auditor in each county, on the second Monday of March shall attend at the court-house, and sell the whole of each tract of land as contained in the list, heretofore provided for, at public auction, to the highest bidder. He shall offer each tract separately, beginning with the first tract contained in the list and continue on through it, until each tract contained therein is sold. The county auditor may adjourn the sale from day to day until he has disposed of or offered for sale each tract of land specified in the notice. This section shall not prevent the auditor from offering a tract of land two or more times at the same sale.”

Thus, it is seen that such sales are to be continued from day to day with the auditor repeatedly offering each parcel until sold for an amount at least sufficient to satisfy the tax, assessment, interest, penalty and costs of sale. The surplus, if any, should be distributed as provided in Section 5757, General Code.

If any parcels remain unsold for want of bidders, Section 5755, General Code, permits the county commissioners at the regular June session to order the auditor to offer such lands for sale at the next regular sale of forfeited lands to the highest and best bidder without reference to the amount of taxes, assessments, penalties and interest due thereon, said Section being as follows:

“If a tract or parcel of land does not sell at such public sale for an amount sufficient to pay the taxes, assessments, penalties and interest which stand against it, the commissioners of the county in which it is situated, at their regular annual session in June preceding the next regular sale, if in their opinion it is of less value than the amount of taxes, assessments, penalties, and interest due upon it, may order the auditor of the county to offer it for sale at the next regular sale of forfeited lands, and sell it to the highest and best bidder therefor, irrespective of the amount of taxes, assessments, penalties, and interest due upon 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 which remain after applying the amount thereon for which it was sold.”

A careful examination of the statutes dealing with forfeited lands fails to disclose any provision for transferring lands from the forfeited land list to the foreclosure list. In the absence of such authority, it must be presumed that the legislature did not intend such transfers to be made. The auditor may exercise only the powers given him by the legislature. As a public official he has such powers only as are expressly conferred upon him by law and such as are necessarily implied from those so conferred. 32 O. Jur., 933, Section 74. It therefore appears that once lands have been placed upon the forfeited land list, unless redeemed, they must be sold by the auditor as forfeited lands and cannot be transferred to the foreclosure list.

In specific answer to your inquiry, it is my opinion that after lands have been placed on the forfeited land list there is no authority for transferring such lands to the foreclosure list. Unredeemed lands on the forfeited land list must be sold as provided in Section 5752, General Code, if possible. If found to be of value less than the amount of taxes, assessments, penalties and interest due after having been offered for sale as provided in Section 5752, General Code, such lands may be sold to the highest bidders as provided in Section 5755, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.