

Section 5752, General Code, states the time and provides the manner of conducting said sale.

The foregoing sections provide and determine the procedure to be followed in the sale of forfeited lands, and Section 5748, supra, provides that the sale of forfeited lands shall be disposed of agreeably to the provisions of said sections.

The foregoing prescribed procedure is entirely different from the procedure provided by Chapter Fourteen (Sections 5704, et seq., General Code) for the sale of delinquent lands.

In the case of *State ex rel. U. S. Mortgage & Trust Company vs. Godfrey, Auditor*, 62 O. S. 18, at page 21, in construing Sections 2899 and 2900, Revised Statutes, now Sections 5744 and 5746, respectively, prescribing how forfeited lands shall be sold, Davis, Judge, stated as follows:

"It will conduce to clear thinking in this case to note that certain sections of the Revised Statutes cited by the defendant (Secs. 2899 and 2900), as well as all of the other sections included in the same chapter, relate solely to the forfeiture and redemption of lands which have been offered for sale at a delinquent tax sale and were not sold for want of bidders. The procedure for the sale or redemption of forfeited lands is strikingly different from that for delinquent taxes; and the legislation respecting these two classes of tax sales is so carefully distinguished by the Legislature itself, that sections relating to one class cannot be safely relied on in construing the effect of proceedings in the other class."

It is, therefore, my opinion that the procedure prescribed in Sections 5704, et seq., General Code, in regard to the sale of delinquent lands for the non-payment of taxes is inapplicable to the sale of lands forfeited to the state. The procedure for the sale of lands forfeited to the state for the non-payment of taxes is prescribed by Sections 5744, et seq., of the General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2311.

HEALTH COMMISSIONER—CITY—EMERGENCY—BORROWING OF  
MONEY BY TAXING AUTHORITIES—NOT MANDATORY.

*SYLLABUS:*

*The determination of a city health commission, which, by virtue of a charter provision, has been given all the powers conferred by law and the Constitution of Ohio upon municipal boards of health, that an emergency exists which requires the expenditure of funds in excess of those appropriated for the purpose by the city taxing authority, does not, where it appears that funds are not otherwise available, make it mandatory upon said taxing authority to borrow money for such purpose and issue notes under the provisions of Section 2293-7, General Code.*

COLUMBUS, OHIO, July 2, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion, and which reads as follows:

"We are enclosing herewith copy of a letter received from the director of law of the City of Akron, Ohio.

The director raises the question as to the power of a city health commission to determine that an emergency exists which requires the expenditure of funds in excess of those appropriated for the purpose by the city taxing authority. This question being of general interest we will very much appreciate your views in connection therewith."

Accompanying your communication, and to which you refer, is a letter from the director of law of the City of Akron, Ohio, which contains a statement of facts on which your request is based, and from which I note the following:

"On February 14, 1928, the Council of the City of Akron, Ohio, passed the annual appropriation budget for 1928, based upon the estimated receipts for the fiscal year, so that under the law as amended in 1927, any additional appropriation which Council desires to make will have to be made from revenues not anticipated at that time, or by borrowing money by the issuing of notes, bonds or certificates of indebtedness and placing the carrying charges outside of the fifteen mill limitation.

On February 15, 1928, the Health Commission of said city passed a resolution, of which the following is a copy:

'Whereas, the prevalence of smallpox, scarlet fever and diphtheria and the diphtheria death rate in Akron are increasing at an alarming rate, and

Whereas, such epidemic and its threatened serious increase constitute an emergency necessitating immediate remedial action.

Therefore, Be it Resolved that the Council of the City of Akron be requested to make the following emergency appropriation:

\$12,270.00 for nursing service;

\$14,860.00 for the establishment and operation of a Contagious Disease Hospital;

\$5,000.00 to be used for purchasing antitoxin, toxin-antitoxin, other necessary medical supplies, stationery and printing and other expense incident to treatment and immunization outside of hospitalization.'

On March 6, 1928, a resolution declaring an emergency was presented to Council 'requesting the Tax Commission of Ohio to issue a certificate determining that there are no funds available other than by borrowing money and issuing notes therefor to provide for such emergency,' which resolution incorporated in general the terms of the resolution passed by the Health Commission and which is hereinbefore set out.

The tentative budget presented by the Health Department to the City Council for the year 1928 included the same items set out in the foregoing resolution. When the resolution of March 6th was presented to Council, the Director of Health, on the floor of Council, admitted that the items set out in the resolution of the Health Department were intended to be spread out over the entire year.

I might also suggest that Section 79 of the city charter which defines the powers of the Health Commission, provides that 'The Health Commission shall have all the powers which are conferred by law and by the Constitution of Ohio upon municipal boards of health.'

I am submitting the following questions based upon the facts herein set out for your consideration :

Is the finding of the Health Commission that an emergency exists conclusive, and if so, is it mandatory upon the taxing authority to issue notes and borrow the exact sum of money demanded to provide for such emergency?"

On April 17, 1919 (108 O. L. Pt. 1, p. 236), the Legislature passed an act to create municipal and general health districts for purposes of local health administration. Sections 1261-16 to 1261-43, inclusive, General Code, were therein enacted as original sections. Section 1261-16 created municipal health districts to consist of cities having a population of twenty-five thousand or more and general health districts to consist of all the townships and municipalities in each county, exclusive of cities having twenty-five thousand or more population. This act also amended Sections 4404 and 4405, General Code, and certain other sections in the chapter relating to boards of health in cities and villages, to provide for the organization and powers of boards of health in municipal health districts.

Sections 1261-16 to 1261-40, inclusive, General Code, as enacted in the act of April 17, 1919, were amended on December 18, 1919 (108 O. L. Pt. 2, p. 1085), and placed in their present form and, as so amended, Section 1261-16, General Code, provides :

"For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act (G. C. Sec. 1261-16 et seq.) shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district."

Sections 1261-17 to 1261-43, inclusive, General Code, deal almost entirely with the organization, powers and duties of boards of health of general health districts and contain no provisions which are pertinent to your request.

As stated above, Sections 4404 and 4405, General Code, together with certain other sections of the chapter pertaining to boards of health in cities and villages, were amended in the act of April 17, 1919, to provide for the organization and powers of municipal boards of health. These sections were also amended in the act of December 18, 1919, the only material changes being the substitution of the words "city health district" for "municipal health district." As so amended, and as it now reads, Section 4404, General Code, provides :

"The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Providing that nothing in this act (G. C. Sec. 1261-16 et seq; 4404; 4405; 4408; 4413) contained shall be construed as interfering with the authority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided."

Under the present form of the law the state is divided, for purposes of local health administration, into city health districts and general health districts. The provisions of law relative to general health districts are found in Sections 1261-16 to 1261-43, inclusive, General Code, while those relative to city health districts are found in Sections 1261-16 and 4404 to 4475, inclusive, General Code.

The City of Akron constitutes a city health district, and apparently provision has been made by charter for administration of the laws relating to health by a health commission. It appears, however, from the letter of the director of law, *supra*, that Section 79 of the charter provides that the health commission shall have all the powers which are conferred by law and by the Constitution of Ohio upon municipal boards of health.

Particularly pertinent to your inquiry are Sections 4413 and 4425 to 4451, inclusive, General Code. The first of these sections empowers boards of health of city health districts to make such orders and regulations as they deem necessary for their own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suspension of nuisances. Sections 4425 to 4451, inclusive, General Code, relate to the powers of such boards of health in times of epidemic or threatened epidemic. It will not be necessary to quote all of these sections. Briefly, the following powers are enumerated therein: The imposition of quarantine on public conveyances (Section 4425); the removal of persons afflicted with infectious or contagious diseases to quarantine hospitals or other places provided for such persons (Section 4428); the quarantine of private houses where cases of dangerous communicable diseases are reported (Sections 4429 and 4430); the employment of persons to guard quarantined houses (Section 4431); the disinfecting of houses where persons who have had a dangerous communicable disease have been ill or have died, the destruction of infected bedding, clothing, buildings and articles which cannot be made safe by disinfection (Sections 4432 to 4434, inclusive); the providing for the maintenance of certain quarantined persons (Section 4436); the inspection of school houses and the closing and disinfecting of the same (Section 4448); and the supplying of agents and affording inducements and facilities for gratuitous vaccination (Section 4449).

Section 4450, General Code, was repealed by the 87th General Assembly in The Uniform Bond Act (112 v. 364). Prior to such repeal it provided:

"In case of epidemic or threatened epidemic or during the unusual prevalence of a dangerous communicable disease, if funds are not otherwise available, the council of a municipality may borrow any sum of money that the local board of health deems necessary to defray the expenses necessary to prevent the spread of such disease. Such money may be borrowed until the next levy and collection of taxes is made, at a rate of interest not to exceed six per cent per annum. Thereupon the board may expend the amount so authorized to be borrowed, which amount, or so much thereof as is expended, shall be a valid claim against the municipality from the fund so created."

Section 4451, General Code, was not repealed in The Uniform Bond Act; is still in effect, and provides:

"When expenses are incurred by the board of health under the provisions of this chapter, upon application and certificate from such board, the council shall pass the necessary appropriation ordinances to pay the expenses so incurred and certified. The council may levy and set apart the necessary sum to pay such expenses and to carry into effect the provisions of this chap-

ter. Such levy shall, however, be subject to the restrictions contained in this title."

By the terms of Section 4451, General Code, supra, it is the mandatory duty of the council of a city to appropriate money out of the general fund to pay the expenses incurred by city boards of health, in the exercise of the powers and the discharge of the duties granted to and imposed upon such boards of health, under the provisions of the chapter relating thereto. If it appears that there is money available in the general fund for that purpose and council refuses to make the appropriation, it can be compelled to do so by mandamus, having due regard to other expenditures made mandatory by law. However, where there is no money available a different situation presents itself. Under former Section 4450, General Code, council was given power, where funds were not otherwise available, to borrow any sum *that the local board of health deemed necessary* to defray the expenses necessary to prevent the spread of an epidemic.

The power given to council by this section was not mandatory. The provision in Section 4450 is that council may borrow money, and in its common acceptation the word "may" means "permission." The word "may" is not ordinarily considered as mandatory in character, although, under certain conditions, it may be construed as "must." The words of a statute receive their ordinary interpretation, unless such interpretation would be repugnant to the intention of the Legislature as such intention may be gathered from the entire statute. I am unable to reach the conclusion that to give the word "may" its ordinary interpretation would be repugnant to the intention of the Legislature, especially in view of the use of the word "shall" in Section 4451, supra, which makes mandatory the appropriation of moneys out of the general fund to pay the expenses incurred by a city board of health when there are moneys in the general fund available for such purpose.

As stated above, Section 4450, General Code, was repealed in The Uniform Bond Act. In the same act, however, the Legislature enacted Section 2293-7, General Code, which provides:

"In case of epidemic or threatened epidemic, or during an unusual prevalence of a dangerous communicable disease, or in case of the destruction by fire, flood or extraordinary catastrophe of any bridge, road, school or public building, if it is determined by the Tax Commission of Ohio that the funds are not otherwise available, the taxing authorities may borrow money and issue notes: (a) to defray those expenses which the local board of health deems necessary to prevent the spread of such disease, or (b) to provide temporary facilities for bridge, road, school or building purposes. Such notes shall mature one-half on March first next following the next February tax settlement at which, in accordance with the ordinary budget procedure, a tax to pay such notes can be included in the budget and one-half on the following September first, and a tax shall be levied to pay such notes, which tax shall be outside of all limitations of law."

Comparing the language of Section 2293-7, in so far as it applies to threatened epidemics, etc., with the language of repealed Section 4450, supra, it will be observed that the wording is practically identical, except that the determination of whether or not funds are otherwise available now lies with the tax commission. The power to borrow money to prevent the spread of epidemics is still permissive and council cannot be compelled to do so.

Answering your question specifically, it is my opinion that the determination of a city health commission, which by virtue of a charter provision, has been given all the

powers conferred by law and the Constitution of Ohio upon municipal boards of health, that an emergency exists which requires the expenditure of funds in excess of those appropriated for the purpose by the city taxing authority, does not, where it appears that funds are not otherwise available, make it mandatory upon said taxing authority to borrow money for such purpose and issue notes under the provisions of Section 2293-7, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2312.

APPROVAL, ABSTRACT OF TITLE TO LAND OF GEORGE R. BURDSAL,  
IN THE VILLAGE OF NEWTOWN, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, July 3, 1928.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You recently submitted to this department for examination and opinion a corrected abstract of a certain tract of land owned by one George R. Burdsal, in the Village of Newtown, Hamilton County, Ohio, and more particularly described in former Opinion No. 2036 of this department, under date of April 30, 1928. Upon examination of said corrected abstract I find that the objections as noted by me in said former opinion have been corrected by further information which has been made a part of said abstract.

I am of the opinion that said George R. Burdsal has a good and indefeasible title to said premises, subject only to the taxes for the last half of the year 1927, apparently amounting to the sum of \$20.35, and the taxes for the year 1928, the amount of which is as yet undetermined. I understand that your department has some arrangement with Mr. Burdsal with respect to the payment of the taxes above referred to, and this matter should, of course, be taken care of at the time the purchase of said tract of land is concluded.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2313.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF ROBERT W. TURPIN,  
IN THE VILLAGE OF NEWTOWN, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, July 3, 1928.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a corrected abstract of title of certain tracts of land, of which one Robert W. Turpin is the owner of record, in the Village of Newtown, Hamilton County, Ohio, and which has been more particularly described in former Opinion No. 2029 of this department, under date of April 28, 1928. From my examination of said corrected abstract I find some of