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LAND FORFEITED TO STATE—SOLD PURSUANT TO SECTION 5723.01 ET SEQ., RC—PURCHASER PAID PURCHASE PRICE TO COUNTY AUDITOR—RECEIVED CERTIFICATE OF SALE, SECTION 5723.12 RC—CERTIFICATE NOT PRESENTED TO AUDITOR OF STATE—FEE OF \$1.25 NOT PAID—NO DEED RECEIVED FROM AUDITOR FOR PROPERTY—FORMER OWNER HAS RIGHT TO REDEEM PROPERTY—MUST PAY INTO COUNTY TREASURY ALL TAXES, ASSESSMENTS, PENALTIES AND INTEREST DUE—SECTION 5723.03 RC.

SYLLABUS:

Where land forfeited to the state has been sold pursuant to the provisions of Section 5723.01 et seq. of the Revised Code, and the purchaser has paid the purchase price to the county auditor and received the certificate of sale provided in Section 5723.12, Revised Code, 5762, G. C., but has not presented said certificate to the Auditor of State or paid to the auditor the fee of \$1.25 prescribed by said section and has not received from the auditor a deed for such property, the former owner has the right under Section 5723.03, Revised Code, 5746, G. C. to redeem said property, by paying into the county treasury all the taxes, assessments, penalties and interest then due thereon.

Columbus, Ohio, December 30, 1953

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

I have before me your request for my opinion, your letter reading, in part, as follows:

"We have this situation: A property has been sold as forfeited land, the County Auditor has issued a Certificate to the Purchaser, and the purchaser has paid into the hands of the County Auditor, and he, in turn, to the Treasurer, the amount realized from the sale.

"Section 5723.16 R.C., as you know, provides that the purchaser of forfeited land, his heirs and assigns, from the date of such purchase, shall be held in all courts as the Assignee of the State. The former owner of the property in question has attempted to pay to the Treasurer those taxes which were a charge upon the real estate at the time of the sale by the Auditor, such attempt being made after the Treasurer had accepted the proceeds of the Auditor's sale, but before a deed had been executed and delivered by the Auditor.

"Will you kindly advise whether or not, in your opinion, the former owner could redeem, the tax lien having passed to the purchaser at the Auditor's sale?"

The provisions of the Revised Code, relating to forfeited lands, are found in Sections 5723.01 to 5723.19. These provisions were formerly embodied in Sections 5744 to 5773, General Code. Section 5723.03, Revised Code, 5746, G.C., reads as follows:

"If the former owner of a tract of land or town lot, which has been forfeited, *at any time before the state has disposed of such land* or lot, pays into the treasury of the county in which such land or lot is situated, all the taxes, assessments, penalties, and interest due thereon at the time of such payment, the state shall relinquish to such former owner all claim to such land or lot. The county auditor shall then re-enter such land or lot on his tax list, under the name of the proper owner." (Emphasis added.) Section 5723.12, Revised Code, 5762, G.C. reads as follows:

"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 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 one dollar and twenty-five cents, 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. When a tract of land has been duly forfeited to the state and sold under such sections, *the conveyance* of such real estate by the auditor *shall extinguish all previous title* and invest the purchaser with a new and perfect title, free from all liens and encumbrances, except taxes and installments of special assessments and reassessments not due at the time of such sale, and

except such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which the land was forfeited, became due and payable.” (Emphasis added.)

Your letter presents a factual situation, wherein it appears that the purchaser of the forfeited land in question, had received his certificate of purchase, and had paid the purchase money into the hands of the county auditor, and he in turn, had paid same to the county treasurer, but said purchaser had not presented his certificate to the auditor, and accordingly, had not received the auditor's deed for the property. In that situation the former owner of the property has attempted to pay to the treasurer those taxes which were a charge on the real estate at the time of the sale by the auditor.

It appears, therefore, that the sole question is whether the owner may, by payment of the delinquent taxes, redeem the premises, and thereby prevent the completion of the sale by the delivery of the auditor's deed.

This question was squarely before the Court of Appeals for Cuyahoga County, in the case of Uhinck vs. Boyle, Treasurer, 84 Ohio App., 71. In that case, it appeared that after the sale, the purchaser paid into the hands of the county auditor, the purchase price, and received the certificate prescribed by the statute, but had not presented that certificate to the auditor or paid the fee of \$1.25, as required by the law, and had not received the deed for the premises.

In this situation, the plaintiff, the former owner, demanded of the county treasurer, a tax bill showing the correct amount of taxes due, and tendered payment, which request was refused. She then filed suit, seeking to enjoin the county auditor from completing the sale to the purchaser and to compel the county treasurer to permit her to redeem her property, by paying the amount of taxes legally due. The Common Pleas Court, upon final hearing entered a decree enjoining the conveyance of the lot to the purchaser, and directing the county auditor to vacate such sale. The decree further provided that the plaintiff be permitted to redeem her property by payment of the amount of the taxes, and ordered the return to the purchaser of the amount deposited by him pursuant to the forfeited land sale proceeding. The Court of Appeals affirmed the judgment of the lower court, holding:

“The owner of a parcel of land which has been forfeited to the state for failure to pay taxes levied thereon may redeem such land by the payment of the taxes legally due thereon to the county auditor at any time before the county auditor has prepared and delivered a deed to the purchaser of such property at a forfeited land sale in accordance with Sections 5718, 5718-1, 5718-1a, 5718-1b, 5718-1c, 5746, 5751 and 5752, General Code.”

In the course of the opinion the court said :

“Section 5762, General Code, provides in part :

‘When a tract of land has been duly forfeited to the state and sold agreeably to the provisions of this chapter, the *conveyance* of such real estate by the county auditor shall extinguish all previous title thereto and invest the purchaser with a new and perfect title.’

“In other words, forfeited lands are not ‘disposed of’ under Section 5746, General Code, until there has been a conveyance under Section 5762, General Code. The certificate provided for by Section 5762 does not convey the title to the property to the purchaser at a forfeited land sale. The certificate is simply evidence that he was the highest bidder entitling him to a deed for the property. Upon this point that section provides :

‘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.’

“* * * until the county auditor delivered his deed for property bought at a forfeited land sale the property had not been ‘disposed of,’ and until such deed was delivered to the purchaser the owner of such land may redeem the same by paying the taxes, penalties and interest then legally due, as provided by law.”

(Emphasis added.)

In the case of *Kinney vs. Hoffman*, Treasurer, 151 Ohio St., 517, substantially the same question was presented. In that case, it appeared that Kinney and wife were the owners of certain property which was forfeited to the state and sold pursuant to the statutes hereinabove mentioned. The purchaser at the sale was Kinney, himself, who was not aware of his right under Section 5746, General Code, to redeem the property. It appeared that pursuant to such sale, he paid into the hands of the

county auditor \$4,361.85, which was the total of his bid, plus the cost of transfer and an auditor's deed. Before receiving his deed from the auditor, on learning of his right he tendered to the treasurer the sum of \$3,881.02, being the amount of the delinquent tax, together with the sum of \$1.50 for redemption fee, and demanded the return of the amount which he had paid on the purchase. Upon the refusal of the treasurer to comply with this request, he filed his suit in the Court of Common Pleas of Stark County, against the County Treasurer for the sum of \$441.54, being the difference between the amount paid on the land sale, and the amount required for redemption. The court sustained a general demurrer to the petition and that judgment was affirmed by the Court of Appeals.

Thereupon, it appearing that the judgment in that case was in conflict with the judgment of the Court of Appeals in the Uhinck case, *supra*, the record was certified to the Supreme Court for review and final determination. The decision of the court as shown by the syllabus is as follows:

"1. The law providing for the redemption of land sold for taxes is equitable in character and should receive a liberal interpretation.

"2. Under the provisions of Section 5746, General Code, if the former owner of a tract of land or town lot which has been forfeited for nonpayment of taxes, at any time before the state has disposed of such land or lot shall pay into the treasury of the county in which such land or lot is situated all the taxes, assessments, penalties and interest due thereon at the time of such payment, the state shall relinquish to such former owner or owners, all claim to such land or lot.

"3. Such premises are not 'disposed of' within the purview of Section 5746, General Code, until the county auditor executes and delivers his deed therefor, which deed, under the provisions of Section 5762, General Code, becomes *prima facie* evidence of the title in the purchaser."

In the course of the opinion, the court, after referring to the statutes which I have quoted, said:

"Under long established procedure, certificates of sale are first issued and thereafter a deed is executed by the county auditor. The terms 'sold' and 'disposed of' therefore refer to two separate and distinct acts; the first being the sale and issuance of a certificate and the latter the execution of the deed of conveyance.

“Under the provisions of Section 5746, General Code, the right to redeem extends until the state ‘has disposed of such land,’ no mention being made therein of the sale. All the other sections relating to the sale of such forfeited lands provide preliminary steps essential to the final disposition of the lots and use the word ‘sold’ or ‘sale.’ As most generally defined the expression ‘dispose of’ as used in the connection it is here signifies—alienate, transfer, relinquish, part with. See 12 Words and Phrases.”

Thereupon, the court reversed the judgment of the Court of Appeals and remanded the case to the Court of Common Pleas “for further proceedings in accordance with this opinion.”

It appears to me these cases cover precisely the situation presented in your communication, and that the decision of the Supreme Court in the case of *Kinney vs. Hoffman*, is decisive of the question submitted.

I note your reference to Section 5723.17, Revised Code, which provides :

“The purchaser of forfeited lands, his heirs or assigns, from the day of such purchase, shall be held in all courts as the assignee of the state. The amount paid by such purchaser for said land at such tax sale, with all taxes afterward paid thereon by such purchaser, his heirs or assigns, with interest thereon, shall be a lien on said land, and may be enforced as any other lien.”

This section should, in my opinion, be read in connection with the next section, to wit, Section 5723.17, Revised Code. That section reads :

“When the claimant of any lands sold for the nonpayment of taxes, assessments, penalties, interest, and costs, or his heirs or assigns, recovers the land sold, by reason of the invalidity of such sale, such claimant, or his heirs or assigns, shall refund to the purchaser, or his heirs or assigns, the amount of the purchase price, with all other taxes, assessments, penalties, interest, and costs paid by such purchaser, or his heirs or assigns to the time of such recovery, with interest. Such sum shall be paid to such purchaser entitled thereto, before he is evicted by any claimant so recovering such land. This section does not prevent a purchaser from obtaining the value of any improvements made upon said land under sections 5303.07 to 5303.17, inclusive, of the Revised Code.”

The purpose of the lien provided for by the preceding section then becomes clear. It protects a purchaser who has paid taxes which the former owner should have paid, in the event the sale is found to be invalid and

he is dispossessed by a successful claimant. This provision for a lien is certainly not intended to defeat the right of redemption by the former owner when he has proceeded strictly pursuant to the right given him by the statute.

Still another section may be noted which would appear to bear on the duty of the county treasurer with reference to a refund of the purchase money deposited with the county auditor, where the former owner has duly exercised his right of redemption. Section 5723.14, Revised Code, provides:

“The sale of any tract or lot of land under sections 5723.01 to 5723.19, inclusive, of the Revised Code, 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 county auditor shall have his money refunded from the county treasurer.”

The word “regularly” used in this connection appears to me to be equivalent to “lawfully,” and not to refer to payment of taxes semi-annually as contemplated by the tax laws. If the owner has exercised the right which the law gives him to redeem his property before it is “disposed of” by the state, by paying the delinquent taxes, interest and penalties, then it appears to me that the same have been paid “regularly” within the purview of the section last quoted, and that it is the duty of the treasurer to make the refund as provided by the statute.

Accordingly, it is my opinion and you are advised that where land forfeited to the state has been sold pursuant to the provisions of Section 5723.01 et seq. of the Revised Code, and the purchaser has paid the purchase price to the county auditor and received the certificate of sale provided in Section 5723.12, Revised Code, 5762, G.C., but has not presented said certificate to the Auditor of State or paid to the auditor the fee of \$1.25 prescribed by said section, and has not received from the auditor a deed for such property, the former owner has the right under Section 5723.03, Revised Code, 5746, G.C., to redeem said property, by paying into the county treasury all the taxes, assessments, penalties and interest then due thereon.

Respectfully,

C. WILLIAM O'NEILL
Attorney General