

1640.

A DEPUTY COUNTY AUDITOR, IN THE ABSENCE OF THE COUNTY AUDITOR, MAY SIGN, EXECUTE AND DELIVER A DEED TO THE PURCHASER IN A FORFEITED LAND SALE. §§319.05-3.06-5723.12, R.C.

SYLLABUS:

By virtue of Sections 319.05 and 3.06, Revised Code, a deputy county auditor, in the absence of the county auditor, may sign, execute and deliver a deed to the purchaser in a forfeited land sale held under the provisions of Section 5723.12, Revised Code.

Columbus, Ohio, August 16, 1960

Hon. Fred E. Jones, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

The question which you have submitted for opinion reads as follows:

“May a deputy county auditor, in the absence of the county auditor, sign, execute and deliver a deed to the purchaser in a forfeited land sale?”

The county auditor may appoint one or more deputies to aid him in the performance of his duties. Section 319.05, Revised Code. A deputy, when duly qualified, may perform any duties of his principal. Section 3.06, Revised Code. Although there is some doubt whether a deputy may act for his principal in matters requiring the exercise of judgment and discretion, there is no question that a deputy may perform a purely ministerial duty. 14 Ohio Jurisprudence, 2d, Counties, Section 94, page 270.

In *Haines v. Lindsey*, 4 Ohio, 88, the court held that the power to make conveyance of lands sold under execution may be legitimately exercised by a deputy sheriff because the act of executing the deed is strictly ministerial. Such a deed, however, must be signed by the deputy in the name of his principal or it is invalid. *Anderson v. Brown*, 9 Ohio, 151. While the actual conduct of the sale of forfeited lands pursuant to Chapter 5723., Revised Code, may involve the exercise of some discretion on the part of the county auditor (*The State ex rel. Hecht v. Zangerle, Aud.*, 148

Ohio St., 9), the execution and delivery of a deed after the sale has been completed is obviously a ministerial duty. See Section 5723.12, Revised Code.

Accordingly, it is my opinion, and you are advised that by virtue of Sections 319.05 and 3.06, Revised Code, a deputy county auditor, in the absence of the county auditor, may sign, execute and deliver a deed to the purchaser in a forfeited land sale held under the provisions of Section 5723.12, Revised Code.

Respectfully,

MARK McELROY

Attorney General