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FORFEITED LAND SALE—AFTER SALE OF LOTS OR LANDS, COUNTY TREASURER SHOULD REFUSE TO ACCEPT FROM FORMER OWNER, TAXES, ASSESSMENTS, PENALTIES AND INTEREST DUE AT TIME OF SALE—PROVISO, UNLESS PAYMENT MADE PRIOR TO SALE—DUTY OF COUNTY AUDITOR TO EXECUTE AND DELIVER DEED FOR SUCH LOT OR LANDS TO PURCHASER, HIS HEIRS OR ASSIGNS—RECEIPT, CERTIFICATE OF SALE AND ONE DOLLAR AND TWENTY-FIVE CENTS—SECTION 5746 G. C.

SYLLABUS:

After the sale of a lot or lands at a forfeited land sale, the county treasurer should refuse to accept from the former owner the taxes, assessments, penalties and interest which were due at the time of sale, and unless such taxes, assessments, penalties and interest have been paid prior to such sale, it is the duty of the county auditor to execute and deliver a deed for such lot or lands to the purchaser thereof or his heirs or assigns upon receipt of the certificate of sale and one dollar and twenty-five cents.

Columbus, Ohio, August 27, 1948

Hon. Marvin A. Kelly, Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“The County Auditor recently concluded the sale of approximately nine hundred properties which had been forfeited to the state of Ohio and prior to the delivery of deed some persons have come in and tendered payment of taxes in full, which was refused by the Treasurer. Section 5746 of the General Code provides:

“‘If the former owner of a tract of land or town lot, which has been so forfeited, 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. The county auditor shall then re-enter such land or lot on his tax list, with the name of the proper owner.’

“The writer has maintained that redemption of forfeited lands under the law as above may be made any time before delivery of the deed by the Auditor.

“QUESTION:

- (a) Should the Treasurer receive the money in payment of taxes in full together with charges, penalties, etc. as provided by law?
- (b) Should the Auditor re-enter such land on the tax list in the name of the proper owner appearing on the tax duplicate if said tender of taxes is made prior to the delivery of the deed by the Auditor?

“Several actions in mandamus to compel the Treasurer to accept payment of taxes and Auditor to restore to the tax duplicate are about to be filed and I am advised by a member of the Court of Appeals that the matter could not be heard for perhaps two months or more. In the meantime many of these persons are demanding their deeds.”

After the delinquent lands have been forfeited to the state by the Common Pleas Court as provided in Section 5718-1c, General Code, or

for the reason that no bids were received when such lands were offered for sale at a tax lien foreclosure, as provided in Section 5744, General Code, taxes, assessments, penalties and interest due thereon may still be paid and such lands thereupon redeemed on the tax list and duplicate in the name of the proper owner. Specific provisions therefor are found in Section 5746, General Code, which reads:

“If the former owner of a tract of land or town lot, which has been so forfeited, *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. The county auditor shall then re-enter such land or lot on his tax list, with the name of the proper owner.”
(Emphasis added.)

Therefore, until the state “has disposed of such land, or lot,” the former owner is privileged to pay the delinquencies and have the property restored to his name on the tax list and duplicate. In Webster’s New International Dictionary the phrase “dispose of,” among other things, is said to mean: “c. To transfer to the control of someone else, as by selling; to alienate; part with; relinquish; bargain away.” Forfeited lands and lots are thus “disposed of” by the state when the auditor holds his sale and sells the same as evidenced by his certificate of sale. That a former owner may redeem his lands or lots at any time prior to sale is further evidenced by the provisions for the auditor’s notice of sale found in Section 5751, General Code, wherein, inter alia, it is provided:

“* * * Such notice shall state that if the taxes, assessments, penalties, interests and costs charged against the lands forfeited to the state for non-payment of taxes are not paid into the county treasury and the treasurer’s receipt produced therefor *before the time specified in said notice for the sale of said lands*, * * * each tract, so forfeited, on which the taxes, assessments, penalties, interest and costs remain unpaid will be offered for sale * * * in order to satisfy such taxes, assessments, penalties, interest and costs, * * *.”
(Emphasis added.)

After the state has “disposed of such land, or lot” at the auditor’s forfeited land sale, there appears to be no further provision for redemption of such lands or lots by payment of the delinquencies by the former owner. The rights of the purchaser after receiving his certificate of

sale and the further duties of the auditor are found in Section 5762, General Code, which provides in part:

“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 therefore*, in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs, or assigns. * * *”
(Emphasis added.)

Thus, in mandatory language, the auditor is directed to execute and deliver his deed to the purchaser upon tender of the certificate of sale and one dollar and twenty-five cents. The only exception to such mandatory duty of the auditor is found in Section 5764, General Code, which section reads:

“The sale of any tract or lot of land under the provisions of this chapter, 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 to him from the county treasury.”
(Emphasis added.)

Considering the forfeited land statutes in their entirety, and particularly the sections heretofore mentioned, it is my opinion that after the sale of a lot or lands at a forfeited land sale the county treasurer should refuse to accept from the former owner the taxes, assessments, penalties and interest which were due at the time of sale, and unless such taxes, assessments, penalties and interest have been paid prior to such sale, it is the duty of the county auditor to execute and deliver a deed for such lot or lands to the purchaser thereof or his heirs or assigns upon receipt of the certificate of sale and one dollar and twenty-five cents.

Respectfully,

HUGH S. JENKINS,
Attorney General.