

OPINION NO. 96-047**Syllabus:**

The state of Ohio is vested with ownership of real property forfeited pursuant to R.C. 5723.01(A) to the extent necessary to dispose of the property to pay the amount of the unpaid taxes, assessments, penalties, interest, and costs of sale that stand charged against the property.

To: Charles E. Coulson, Lake County Prosecuting Attorney, Courthouse, Painesville, Ohio
By: Betty D. Montgomery, Attorney General, September 30, 1996

You have requested an opinion regarding the responsibilities of a county with respect to real property forfeited for nonpayment of taxes. Specifically, you wish to know:

1. Does ownership of real property forfeited pursuant to R.C. 5723.01(A) vest in the state of Ohio or the county which instituted foreclosure proceedings against the property?
2. Is a county responsible, pursuant to R.C. Chapter 3734, for the clean up of solid and hazardous wastes on real property that is forfeited to the county under R.C. 5723.01(A)?

R.C. 5723.01(A), which concerns the forfeiture of real property for nonpayment of delinquent real estate taxes, states:

(1) Every tract of land and town lot, which, pursuant to foreclosure proceedings under section 323.25 or 5721.18 of the Revised Code,¹ has been advertised and offered for sale on two separate occasions, not less than two weeks apart, and not sold for want of bidders, *shall be forfeited to the state.*

(2) The county prosecuting attorney shall certify to the court that such tract of land or town lot has been twice offered for sale and not sold for want of a bidder. Such forfeiture of lands and town lots shall be effective when the court by entry orders such lands and town lots forfeited *to the state.* A copy of such entry shall be certified to the county auditor and, after the date of the certification, *all the right, title, claim, and interest of the former owner is transferred to and vested in the state* to be disposed of in compliance with this chapter. (Emphasis and footnote added.)

R.C. 5723.01(A) thus provides that, upon forfeiture of real property for the nonpayment of taxes, "the state" acquires title of the property, with the power to dispose of the property for the purpose of securing the amount of the unpaid taxes. *Dubin v. Greenwood*, 139 Ohio St. 546, 549, 41 N.E.2d 240, 241 (1942); 1991 Op. Att'y Gen. No. 91-027 at 2-148; 1933 Op. Att'y Gen. No. 206, vol. I, p. 291; see *Bauman v. Guckenberger*, 148 Ohio St. 292, 299-300, 74 N.E.2d 369, 373 (1947).

For purposes of the Revised Code, the term "state" is defined as follows:

As used in any statute, unless another definition is provided in such statute or a related statute:

....

(G) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America. "This state" or "*the state*" means *the state of Ohio.* (Emphasis added.)

R.C. 1.59. Pursuant to R.C. 1.42, "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." Because the phrase "the state" has not been separately defined in R.C. 5723.01(A), or by any other statute relating to the forfeiture of real property for unpaid taxes, the phrase "the state," as used in R.C. 5723.01(A), must be construed in accordance with R.C. 1.59(G) to mean the state of Ohio. See 1995 Op. Att'y Gen. No. 95-015 at 2-85 and 2-86.

R.C. 5723.01(A) thus vests the title to real property forfeited pursuant to R.C. 5723.01(A) in the state of Ohio, rather than in the county that instituted foreclosure proceedings against the property. The state, however, does not acquire an absolute indefeasible title to real property forfeited pursuant to R.C. 5723.01(A). As explained in *Dubin v. Greenwood*, 139 Ohio St. 546, 549, 41 N.E.2d 240, 241 (1942):

¹ R.C. 323.25 and R.C. 5721.18 authorize a county to institute foreclosure proceedings for the collection of delinquent real estate taxes.

From an examination of the statutes pertaining to the forfeiture of lands for the nonpayment of taxes (Section 5744 et seq., General Code [now R.C. 5723.01]), coupled with their judicial interpretation, it would seem that upon forfeiture the state does not acquire an absolute indefeasible title to the lands, since before sale they are subject to redemption, and if upon sale a larger sum is realized than the amount of taxes and charges owing, such excess must be retained for the proper owner and paid to him upon demand.

What the state does acquire, upon forfeiture of lands for the nonpayment of taxes, is possession of the lands and the entire estate therein, with the power to dispose of them for the single purpose of securing the amount of the unpaid taxes.

See 1937 Op. Att'y Gen. No. 1045, vol. II, p. 1816; 1933 Op. Att'y Gen. No. 206, vol. I, p. 291.² See generally R.C. 5723.03 (where real property has been forfeited to the state for nonpayment of taxes, a former owner thereof may, at any time before the state disposes of the property, redeem the property by paying into the county treasury in which the property is located all the taxes, assessments, penalties, interest, and costs incurred in the foreclosure or foreclosure and forfeiture proceedings that stand charged against the property at the time of such payment).

Because title to real property forfeited pursuant to R.C. 5723.01(A) is vested in the state and the state is granted the authority to dispose of the property, the state may be considered to have ownership of the property. See *Black's Law Dictionary* 1106 (6th ed. 1990) (defining "ownership" as the "[c]ollection of rights to use and enjoy property, including right to transmit it to others. The complete dominion, title, or proprietary right in a thing or claim. The entirety of the powers of use and disposal allowed by law" (citation omitted)). The ownership granted to the state pursuant to R.C. 5723.01(A), however, is limited to that which is necessary to dispose of the property to pay the amount of the unpaid taxes, assessments, penalties, interest, and costs of sale that stand charged against the property. In answer to your first question, therefore, I conclude that the state of Ohio is vested with ownership of real property forfeited pursuant to R.C. 5723.01(A) to the extent necessary

² 1937 Op. Att'y Gen. No. 1045, vol. II, p. 1816 and 1933 Op. Att'y Gen. No. 206, vol. I, p. 291 concluded that the state does not have an absolute indefeasible title to real property forfeited for the nonpayment of taxes. In reaching this conclusion, both opinions determined that the state does not have a right of possession to property forfeited to the state pursuant to G.C. 5744, now R.C. 5723.01. See, e.g., 1937 Op. Att'y Gen. No. 1045, vol. II, p. 1816 (syllabus, paragraph three) ("[t]he most interest that the state can have in lands or lots forfeited to it for non-payment of taxes, is a lien for the taxes, assessments, penalties and interest remaining unpaid"); 1933 Op. Att'y Gen. No. 206, vol. I, p. 291, 297 (absolute legal title to real property forfeited for nonpayment of taxes vests in the state, while "the equitable title and right of possession ... remain in the former owner until such time as it is divested by sale by the state or until such legal title has been redeemed by the payment of the taxes, assessments, interest, penalties and court costs standing charged against such [real property]").

As stated in the text, however, the Ohio Supreme Court in *Dubin v. Greenwood*, 139 Ohio St. 546, 41 N.E.2d 240 (1942) has determined that the state acquires possession of real property forfeited for nonpayment of taxes. See also 1991 Op. Att'y Gen. No. 91-027 at 2-148 ("[u]pon forfeiture of lands for the nonpayment of taxes, the state acquires possession of the lands and the entire estate therein"). In light of the supreme court's decision in *Dubin v. Greenwood*, I question the validity of the determination of 1937 Op. Att'y Gen. No. 1045, vol. II, p. 1816 and 1933 Op. Att'y Gen. No. 206, vol. I, p. 291 that the state does not have a right of possession to real property forfeited for the nonpayment of taxes.

to dispose of the property to pay the amount of the unpaid taxes, assessments, penalties, interest, and costs of sale that stand charged against the property.

Your second question asks whether R.C. Chapter 3734 requires a county to clean up solid and hazardous wastes on real property that is forfeited to the county under R.C. 5723.01(A). Because ownership of real property forfeited pursuant to R.C. 5723.01(A) is not vested in the county that instituted foreclosure proceedings against the property, it is unnecessary for me to address your second question.³

Therefore, it is my opinion and you are advised that the state of Ohio is vested with ownership of real property forfeited pursuant to R.C. 5723.01(A) to the extent necessary to dispose of the property to pay the amount of the unpaid taxes, assessments, penalties, interest, and costs of sale that stand charged against the property.

³ As a general matter, I note that no provision within R.C. Chapter 3734 requires a county to clean up solid and hazardous wastes on real property that is forfeited to the state pursuant to R.C. 5723.01(A). Moreover, since the authority of the Attorney General to advise county prosecuting attorneys extends only to matters that relate to their official duties, R.C. 109.14; 1990 Op. Att'y Gen. No. 90-076 at 2-326, I have no authority to opine on whether R.C. Chapter 3734 requires the state to clean up solid and hazardous wastes on real property that is forfeited to the state pursuant to R.C. 5723.01(A). *See generally* 42 U.S.C. § 9601(20)(D) ("[t]he term 'owner or operator' does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign"); 42 U.S.C. § 9607(a) (imposing liability for the costs of clean up upon the owner and operator of a solid or hazardous waste facility).