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## COSTS—WHERE PROCEEDS FROM SALE OF DELINQUENT REALTY ARE INSUFFICIENT TO PAY COSTS OF ADVERTISING—PAID FROM GENERAL COUNTY FUND.

## SYLLABUS:

*When, in connection with the sale of real estate for delinquent land taxes, the proceeds derived from such sale are insufficient to pay the cost of advertising, the costs of such proceedings, including the cost of advertising, may be paid from the general county fund not otherwise appropriated.*

COLUMBUS, OHIO, February 26, 1932.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for opinion as follows:

“Will you kindly give us your opinion as to whether or not the law provides any method for the compensation of newspapers for the publishing of legal advertisements in connection with the sales of real estate for delinquent land tax, where the proceeds derived from the sale are insufficient to pay the costs?”

Section 6256 of the General Code, provides that the cost of advertisements such as those to which you refer, shall be taxed as a part of the costs. Such section is as follows:

“The publication of an advertisement, notice or proclamation, required by law to be published in a newspaper by a trustee, assignee, executor, administrator, receiver or other officer of the court or a party in a case or proceeding, shall be approved by the court or clerk thereof and allowed as a part of the costs in the case or proceeding therein.”

Section 5718-3 of the General Code, after providing the method of instituting an action to foreclose a lien for taxes and assessments, provides that:

“ \* \* the prayer of the petition shall be, that the court make an order that said property be sold by the sheriff of the county \* \* in the manner provided by law for the sale of real estate on execution except as hereinafter otherwise provided.”

Section 11682 of the General Code, provides that in sales on execution the advertisement shall be:

“ \* \* once a week, for five consecutive weeks before the day of sale, each insertion to be on the same day of the week. \* \* All sales made without such advertisement *shall be set aside* on motion, by the court to which the execution is returnable.” (Italics the writer's.)

It is therefore apparent that the advertisement is a necessary step in a proceeding to subject land to the satisfaction of a tax lien. On February 3, 1930 (Opinions of the Attorney General for 1930, p. 204) I rendered an opinion to the Prosecuting Attorney of Cuyahoga County, the first branch of the syllabus reading as follows:

"The expense of securing service by publication upon necessary party defendants in an action to foreclose the state's lien for delinquent taxes under the provisions of Section 5718, General Code, may be paid out of the proceeds of the sale of the property as a part of the costs in the action; or such expense may be paid out of the general county fund subject to appropriation therefor by the county commissioners and included in the judgment against the property owner against whom such delinquent taxes have been assessed."

While this opinion concerns the question of service by publication in an action to subject land to the satisfaction of a tax lien, the questions are quite analogous. I therefore quote from page 205:

"In this connection it is noted that by Section 5719, General Code, it is provided that the costs in the action shall be first paid out of the proceeds of the sale of the property. However, the primary obligation for the payment of expenses which may be assessed as costs in an action is upon the party incurring the same, and, in a case of this kind, if a sale of the property is not effected in such foreclosure proceeding or if the property does not sell for enough to pay the costs in the case, the county treasurer, as the party plaintiff in such action, would be liable for the expenses incurred by him in obtaining service by publication upon parties defendant in the action. In such case the court, under the provisions of Section 11628, General Code, may enter judgment in favor of the county treasurer, as plaintiff in such action, against the delinquent property owner or otherwise, as the court may adjudge to be right and equitable.

Inasmuch as in such case the county treasurer is acting in his official capacity, expenses incurred by him in obtaining service by publication on the necessary parties defendant in the action are payable out of the general county fund provided for by Section 5625-9, General Code, which fund is created by the general levy for current expenses authorized and provided for by Section 5625-4 and 5625-5, General Code. Payment of such expenses out of the county treasury can, of course, only be made when an appropriation of money therefor has been made by the county commissioners in the manner provided by Section 5625-29, General Code."

Specifically answering your inquiry I am of the opinion that when, in connection with the sale of real estate for delinquent land taxes, the proceeds derived from such sale are insufficient to pay the cost of advertising, the costs of such proceedings including the cost of advertising may be paid from the general county fund not otherwise appropriated.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*