

On page 553 of said case the court said :

“An infirmary director must give bond ‘before entering on the discharge of his duties.’ Revised Statutes, Section 960. In this respect the law differs from that governing the bond of a sheriff, which prescribes that a sheriff shall give bond ‘within ten days after receiving his commission and before the first Monday of January.’ *State ex rel. Poorman vs. Commissioners*, 61 Ohio St., 506. The term of office of an infirmary director begins on the first Monday in January; but the actual discharge of the duties of such officer does not necessarily begin with his term.”

It will be noted from Section 4748, supra, that “a vacancy in any board of education may be caused by * * * failure of a person elected or appointed to qualify within ten days.” It will also be noted from the above section that “any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, * * *.” A vacancy may therefore exist which has not been filled. Since it has been held that the provision with reference to filing of expense statements under the Corrupt Practice Act is directory and not mandatory as to time, it is my opinion that the persons elected, if they are otherwise qualified, may yet file their expense statements and be entitled to the office.

It is therefore my opinion that if the vacancies have not been filled by the board of education as provided in Section 4748, supra, that the persons receiving the highest number of votes who failed to file an expense account within the ten days after the election, if they are otherwise qualified, may yet prepare and submit their itemized statement of expenses in accordance with law, whereupon they will be entitled to the office.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1814.

DELINQUENT TAXES—ABATEMENT OF SAME—SECTIONS 5718 AND 5719, GENERAL CODE, CONSTRUED.

SYLLABUS:

In foreclosure proceedings under the provisions of Sections 5718 and 5719, General Code, only the taxes which were included in the delinquent land tax certificate are abated, and the taxes and assessments accruing subsequently to the delivery of said certificate are not abated in said foreclosure proceedings, but remain a lien upon the land, unless the same are paid from the proceeds of the sale.

COLUMBUS, OHIO, March 5, 1928.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads :

“We respectfully request from your office an opinion regarding the following situation :

On the 13th day of May, 1926, the county auditor of this county filed with the auditor of state, a delinquent land tax certificate and thereafter on the 24th day of July, 1926, the auditor of state directed the treasurer of this

county to bring foreclosure proceedings upon said unredeemed land tax certificate. The then prosecuting attorney of this county on August 25, 1926, filed a petition in foreclosure as provided by Section 5718 of the General Code. Thereafter some of the parties requested continuation of the proceedings stating that they would make payment of the delinquent taxes. Payment was not made, however, and on October 19, 1927, a decree was entered ordering the premises sold pursuant to the above named section and such premises were sold on November 18, 1927, for one thousand dollars, being a sum considerably less than the amount of taxes, penalties, special assessments and interest thereon.

Thirty days later the purchaser tendered to the sheriff the amount bid on the sale and demanded from the sheriff a deed showing the premises free and clear from all taxes, liens, assessments, encumbrances up to and including the date of the deed.

Our specific question is this. The certificate upon which suit was brought, set forth the delinquent taxes for four years and it was upon this four year certificate that suit was prosecuted to final judgment. Shall the taxes which were included in the certificate of delinquency alone be abated or shall the taxes up to and including the date of sale be ordered abated and the purchaser given a deed free and clear of all taxes as in a foreclosure proceedings?

There is of necessity some delay incurred in prosecuting these actions to final termination and it appears to us that only those taxes which are included in the delinquent certification should be abated."

Section 5718 of the General Code, reads as follows:

"It shall be the duty of the county auditor to file with the auditor of state, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years, and a certified copy thereof shall at the same time be delivered to the county treasurer, and it shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate, within three months from the date of filing of such certificate with the auditor of state, by the county auditor; it shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property therein described, and 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. And the treasurer need not set forth any other or further special matter relating thereto. The certified copy of said delinquent land tax certificate, filed with the county treasurer, as hereinbefore provided, shall be prima facie evidence on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon, plus the amount of eighty-five cents due from the defendants for the delinquency of each year, for advertising and issuance of certificates, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto."

Under the provisions of said section it is the duty of the county auditor to file with the Auditor of State, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years.

It is also the duty of the county auditor to deliver a certified copy of said certificate to the county treasurer. Said section then provides that it shall be the duty of the Auditor of State to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax *certificate*.

It is then provided that it shall be sufficient to allege in the petition that the *certificate* has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property *therein described*.

It is also provided that the certified copy of said delinquent land tax *certificate*, filed with the county treasurer, shall be prima facie evidence at the trial of the action of the *amount* and validity of the taxes, assessments, penalties and interest appearing due and unpaid *thereon*.

It is clear that the foreclosure suit is based upon the certificate of the delinquent tract of land that is delivered to the county treasurer, when said foreclosure proceedings are authorized by the Auditor of State. It is also clear that the lien against the property described in said certificate is based upon the amount of money appearing due and unpaid in said certificate. It is also noted that said certificate is the basis of the prima facie evidence on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid *thereon*. The amount of taxes involved in said suit is therefore determined from said delinquent land tax certificate, and the decree for taxes, assessments and penalties covers only what appears due and unpaid on said certificate.

Section 5719, General Code, reads in part as follows:

"Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty, interest and costs, for the payment of which, the court shall order such premises to be sold without appraisalment. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest and the balance shall be distributed according to law. * * *

It is noted that the judgment rendered is for *such* taxes and assessments as are found due and unpaid. It is evident that the taxes and assessments referred to herein are the taxes and assessments specified in the delinquent land tax certificate and that all taxes and assessments not specified in said certificate, but that become due and payable after the issuance of said certificate are not included in the amount for which said land was sold.

The only authority that the county treasurer has for bringing foreclosure proceedings against delinquent land is the said land tax certificate so issued to him by the county auditor, and the foreclosure proceeding and the sale of the property are for the purpose of paying the taxes and assessments as specified in said delinquent land tax certificate, and the interest and penalties thereon.

It is, therefore, evident that the taxes which were included in the delinquent land tax certificate alone are abated and not the taxes which accrue between the issuing of said certificate and the date of sale. Said taxes accruing subsequent to the issuing of said certificate are still a lien upon said land.

Specifically answering your question, it is my opinion that in foreclosure proceedings under the provisions of Sections 5718 and 5719, General Code, only the taxes which were included in the delinquent land tax certificate are abated, and the taxes and assessments accruing subsequently to the delivery of said certificate are not abated in said foreclosure proceedings, but remain a lien upon the land, unless the same are paid from the proceeds of the sale.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1815.

DELINQUENT TAXES—FORECLOSURE OF LIENS FOR NON-PAYMENT
—WHAT PARTIES SHOULD BE JOINED—COUNTY TREASURER
MAY CONTRACT WITH PERSONS FOR COLLECTION.

SYLLABUS:

1. *In suits to foreclose liens for non-payment of delinquent taxes, all persons having or claiming an interest in the land should be made parties to said suit and should set up said claim or interest so that the court may determine according to law, their respective rights and interests; and whether said land shall be sold free or subject to said rights and interests.*

2. *The county treasurer may legally contract with some person or persons to collect delinquent personal taxes on a percentage basis, provided the contract is approved by the county commissioners and a definite per cent compensation fixed.*

COLUMBUS, OHIO, March 6, 1928.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“I desire your opinion on the following propositions of law:

Is it necessary to make a lien holder a party defendant in a suit to foreclose a tax lien under Section 5718, G. C.?

Also in the event that the party whose name appears upon the tax duplicate as the owner thereof, is only the owner of the tax title, and the real owner's name does not appear thereon, is it necessary to notify the real owners of the pending suit?

Can the county treasurer legally contract with some person to collect delinquent taxes on a percentage basis not exceeding 25% of the amount collected, provided the contract is approved by the county commissioners?”

In answer to your first question you are advised that I have recently considered the identical question in Opinion No. 1727, rendered under date of February 17, 1928, to Hon. Henry W. Harter, Jr., Prosecuting Attorney, Canton, Ohio, the syllabus of which opinion reads as follows:

“In suits to foreclose liens for nonpayment of delinquent taxes, all persons having or claiming an interest in the land should be made parties