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1. TAXES, DELINQUENT—OWNER OF LAND CAN BECOME PURCHASER WITH ALL RIGHTS OF AND ON EQUAL TERMS WITH ANY OTHER MEMBER OF PUBLIC AT SALE UNDER SECTION 5718-3 G. C.
2. WHERE LAND DULY FORFEITED TO STATE—DELINQUENT TAXES—OWNER CAN BECOME PURCHASER AT SALE UNDER SECTION 5752 G. C.

SYLLABUS:

1. An owner of land who has permitted the taxes on his land to become delinquent can become the purchaser of that land with all the rights of and on equal terms with any other member of the public at a sale conducted pursuant to the authority of Section 5718-3, General Code.
2. An owner of land who has permitted the taxes on his land to become delinquent and whose land has been duly forfeited to the state, can become the purchaser of that land with all the rights of and on equal terms with any other member of the public at a sale conducted pursuant to the authority of Section 5752, General Code.

Columbus, Ohio, July 29, 1946

Hon. Earl Henry, Prosecuting Attorney
Cambridge, Ohio

Dear Sir :

I am in receipt of your letter requesting my opinion as to whether the owner of land who has permitted the taxes on his land to become delinquent can become the purchaser of that land at a sale conducted pursuant to the authority of Section 5718-3, General Code, and at a sale conducted pursuant to the authority of Section 5732, General Code. Both of these sections relate to tax sales, the former being a sale in an action to foreclose the lien of the state for taxes, the latter a sale after forfeiture of the land to the state. Your letter expresses particular concern over permitting the owner to buy for an amount less than the tax delinquency which you feel "might encourage him to let his taxes go".

Delinquent tax sale procedure and forfeited land sale procedure, although similar and related to a certain degree, are not identical. It is necessary, therefore, to give separate consideration to each of the two phases of your question.

The statutes dealing with delinquent lands are to be found in Sections 5704 to 5733, inclusive, General Code. The term "delinquent lands" is defined in Section 5705, General Code, which reads as follows :

"Delinquent lands as defined in this chapter shall mean all lands upon which the taxes and assessments, or either, together with penalties, remain unpaid at two consecutive semi-annual tax settlement periods."

Section 5704, General Code, requires the county auditor immediately after each August settlement to make and certify a list and duplicate of all the delinquent lands in his county. Section 5713, General Code, provides that the state shall have a "first and best lien" on the lands described in the delinquent land list and reads in part as follows :

"The state shall have a first and best lien on the lands and lots described in the delinquent land list, for the amount of taxes, assessments, and penalty charged prior to the delivery of such list, together with interest on the principal sum of such taxes and assessments at the rate provided by section 5679 of the General Code, from one year after the date of the August settlement next

preceding the delivery of such list to the date of redemption or sale thereof, and the additional charge of twenty-five cents for the making of said list. If the taxes have not been paid for two years after having been certified as delinquent, the state shall have the right to institute foreclosure proceedings thereon, in the manner provided by this chapter, * * *

The county auditor at the expiration of two years after the certification of lands as delinquent is required to prepare a "delinquent land tax certificate" of each delinquent tract of land or lot contained in the delinquent land list in accordance with Section 5718, General Code, which reads as follows:

"At the expiration of two years after certification, the county auditor shall make, in duplicate, a certificate, to be known as a delinquent land tax certificate of each delinquent tract of land, city or town lot, or part of lot contained in the delinquent land list, upon which the taxes, assessments, penalties and interest have not been paid, describing each tract of land, city or town lot the same as it is described on the tax list and the amount of taxes, assessments, penalty and interest thereon due and unpaid, and stating therein, that the same has been certified to the prosecuting attorney of the county as delinquent. Such certificate shall be signed by the county auditor, or his deputy, and the original filed with the prosecuting attorney."

Before making the certificates provided for in Section 5718, General Code, the county auditor is required by Section 5718-1, General Code, to submit the list of lands on the delinquent list and subject to foreclosure to the county board of revision. If the board is of the opinion that the list contains property which will not bring upon a sale an amount of money sufficient to pay the total amount charged against it on the tax duplicate, together with the costs of foreclosure, the board may order such property to be omitted from foreclosure proceedings. On application to the court of common pleas and in accordance with the procedure outlined in Sections 5718-1a to 5718-1c, inclusive, General Code, such property omitted from the foreclosure proceedings is forfeited to the state of Ohio. This property, thereafter, is not subject to sale under the authority of Section 5718-3, General Code, but must be disposed of in accordance with the provisions of Section 5744, et seq., General Code, relating to forfeited lands.

Property which has been certified as delinquent by the county auditor

to the county prosecutor under the provisions of Section 5718, General Code, is subject to foreclosure in accordance with the provisions of Section 5718-3, General Code, which reads in part as follows :

“It shall be the duty of the prosecuting attorney of the county, except as hereinafter provided, upon the delivery to him by the county auditor of a delinquent land tax certificate, to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state, in any court of competent jurisdiction within nine months thereafter unless the taxes, assessments, penalty, interest and charges are sooner paid, and to prosecute the same to final judgment and satisfaction. * * * The proceedings for such foreclosure shall be instituted and prosecuted in the same manner as is now or hereafter may be provided by law for the foreclosure of mortgages on land in this state, excepting that if service by publication is necessary, such publication shall be made once a week for three consecutive weeks instead of as provided by sections 11295 or 11298 of the General Code, and the service shall be complete at the expiration of three weeks after the date of the first publication. 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, without setting forth in his petition any other or further special matter relating thereto, 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, or if the action be in the municipal court, by the bailiff, in the manner provided by law for the sale of real estate on execution excepting as hereinafter otherwise provided. * * *”

It will be noted that the foregoing section provides that “the prayer of the petition shall be, that the court make an order that said property be sold * * * in the manner provided by law for the sale of real estate on execution, excepting as hereinafter otherwise provided.” This would indicate that the property must be sold to the highest bidder. 17 O. Jur. 924.

Section 5719, General Code, relates to the foreclosure proceedings and reads in part as follows :

“A finding shall be entered of the amount of such taxes and assessments, or any part thereof, as are found due and unpaid, and of penalty, interest, costs and charges, for the payment of which, together with all taxes and assessments payable subsequent to certification for foreclosure, the court shall order such prem-

ises to be sold without appraisal for not less than the total amount of such finding and costs, unless the prosecuting attorney shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of the General Code, and shall be sold for at least two-thirds of the appraised value thereof. * * *

Said premises, if not sold pursuant to the first order of sale may again and successively and notwithstanding the provisions of section 5744 of the General Code, be appraised, advertised and offered for sale by the sheriff, except, however, that the court may waive reappraisal of such premises and order the same to be sold to the highest bidder or may fix a minimum price for which said premises may be sold.

From the proceeds of the sale the cost shall be first paid, next the amount found due for taxes, assessments, penalties, interest and charges, next the amount of any taxes and assessments accruing after the entry of the finding and before sale, all of which taxes, assessments, penalties, interest and charges shall be deemed satisfied, though the amount applicable thereto be deficient, and the balance, if any, shall be distributed according to law.
* * *”

It can be seen from this section that land can be sold for less than the amount of tax delinquency under the first order of sale only when the prosecuting attorney applies for an appraisal and two-thirds of the appraised value is less than the amount of the tax delinquency. If, pursuant to a subsequent order of sale, the minimum price fixed by order of court or by appraisal is less than the tax delinquency or if the court orders the property to be sold to the highest bidder without regard to any minimum price, the property may be sold for an amount less than the tax delinquency. With this amount, although deficient, all of the taxes, assessments, penalties, interest and charges are deemed satisfied.

It is clear and unmistakable that the statutes of Ohio create no prohibition whatever against the owner becoming a purchaser of property at delinquent tax sale under any circumstances. It is true that it is stated in many texts as a general rule that any person under a positive duty to the state to pay the taxes on a particular tract of land cannot become a valid purchaser at a sale of the property for such taxes, and if he does purchase, it is deemed to be merely a mode of paying the taxes and does not found a new title in any way. 61 C. J. 1198; 38 O. J., 1174; 51 A. J., 919; Black on Tax Titles, 2nd Ed. Secs. 273-274; Blackwell on Tax Titles, 4th

Ed. pp. 443, 444. But this doctrine was devised for the protection of persons whose interests in the land would be impaired if a person neglecting his duty to pay a tax were permitted to purchase the land at a resulting tax sale. It is founded on cases which hold that under well-settled principles of equity jurisprudence a property owner cannot cut off junior lien claims against his property by permitting the taxes levied against it to become delinquent and then purchase the title at delinquent tax sale to the detriment of such junior lien claimants. In none of these cases was the owner's right to bid for the purchase of his property at delinquent tax sale questioned by the officials administering the sale nor was the title which the owner acquired as the result of such purchase questioned by the taxing entity.

One of these cases sometimes cited in support of this general rule is the case of *Douglas v. Dangerfield*, reported in 10 Ohio at page 152. The report of that case discloses that Douglas purchased the land in controversy at tax sale in 1829. The land had been entered in 1797 by Bland under a military warrant. The entry was surveyed during the same year. Subsequently, and after the organization of the state government of Ohio, in conformity with the laws of the state, the land had been entered for taxation but was never patented to Bland. Upon the tax duplicate of 1829 the land had been listed in two several parcels—one in the name of Bland and the other in the name of Dangerfield, but the tax duplicate did not show which part of the survey, as to its locality, was listed in the names of the respective owners. After the sale in 1829, the land was transferred to Douglas upon the auditor's books and taxed to him as an entire tract. The taxes were not paid either in 1830 or 1831. In December, 1831, the land was again offered for sale for the taxes of 1830 and 1831. At this sale the land was purchased by the agent of Douglas, and the certificate of purchase was transferred to Douglas. In March, 1833, the auditor of the county, by deed duly executed, again conveyed the land to Douglas in pursuance of this latter sale. Douglas, after the first sale, had taken possession of the land and had exercised acts of ownership over it. In April, 1833, the land was patented to Dangerfield, who claimed to be the assignee of Bland, the original warrant holder, but before the patent was issued the original entry was withdrawn and a new entry and survey made upon the land.

Douglas by a bill in chancery claimed that by his purchase he acquired a perfect equity and that Dangerfield, having subsequently acquired the legal title, should be adjudged to hold the same in trust for him.

The Supreme Court held that the first sale, the sale of 1829, was void and that by his purchase at that sale Douglas acquired nothing. This was on the ground that the land had been improperly listed and taxed and upon the authority of *Lafferty v. Byers*, 5 Ohio, 458.

The question then arose whether Douglas acquired any right against Dangerfield under the sale of 1831. In this regard the court, at page 158, said :

“Why the tax of 1830 was not paid in time ; why that together with the tax of 1831, was not paid without the sale of the land, we know not. If the complainant was doubtful of the validity of his first purchase, and intended by this course of proceeding to cure a defective title, he certainly does not present a case for equitable interference, especially as the sale was in consequence of his own neglect of duty.

If, by this proceeding, he could be considered as having procured a strictly legal title, the circumstances are such as might induce a court of equity to interpose to divest him of that title at the suit of the former owner of the land. But in our view the complainant acquired no additional right by this purchase, and must be held to be in the same situation that he would have been had he paid the taxes before the sale.”

Thereupon the court proceeded to dismiss the bill.

Confusion as to the application of this case to a situation such as the one you present in your request for my opinion undoubtedly has arisen as a result of the reported syllabus of the case which reads as follows :

“One in possession of lands claiming title, and in whose name it is listed for taxation, acquires no additional interest by suffering the land to be sold for taxes and purchasing the same himself.”

This statement, however, must be interpreted with reference to the facts of the case and the questions presented to and considered by the court. 11 O. J. 798. This syllabus, when read in the light of the facts, will be seen to have a more limited application than appears at first blush. Such an interpretation, considered along with the fact that this case was decided and reported before the court adopted the rule of preparing an

authorized syllabus, would indicate that *Douglas v. Dangerfield* has no application to the problem you present in your request for my opinion.

Another case, sometimes cited as upholding the proposition that a delinquent taxpayer can not become a purchaser at a sale of his property for taxes and that if he does purchase it is deemed to be merely a mode of paying the taxes, and if the purchase price is insufficient to pay them in full, it will simply constitute a credit on the amount due, is the case of *Clark v. Lindsey*, reported in 47 O. S. at page 437. This case, in fact, turned upon the equitable principle that a tenant in common will not be permitted to assert against his co-tenant a title acquired by him at a sale for taxes imposed on the joint property.

These cases are not in point. They involve only other private interests in the property. The sole question involved in your request for my opinion is whether or not when the General Assembly provided for the sale of tax delinquent property it thereby intended to preclude the owner from becoming a purchaser.

If the General Assembly had intended to prohibit the owner from bidding, appropriate words were available. In the absence of these words, it is not unreasonable to assume that the General Assembly by its failure to prohibit the owner from bidding intended to afford him an opportunity to regain clear title to his property without requiring him to pay more than it is worth in order to redeem it.

Section 5724, General Code, provides for the redemption of delinquent lands and reads as follows :

“All delinquent land upon which the taxes, assessments, penalty or interest have become delinquent, may be redeemed at any time before foreclosure proceedings thereon have been instituted, by tendering to the county treasurer the amount then due and unpaid.”

To obtain the benefits of this section an owner must tender the full amount due and unpaid. It is not impossible to visualize a case where an owner is unable to take advantage of this method of redemption either because of temporary financial inability or on account of a deflation in the value of real estate which has reduced the market value of his property to an amount less than the tax delinquency.

A great amount of tax delinquency results from the inability of property owners to pay their taxes because of a period of great financial stringency. As a result of a great financial depression real estate values decrease. Some parcels of land assessed for the purposes of taxation at the beginning of a depression are assessed at a value which produces a tax for an amount in excess of the deflated value of that land during the period of the depression. Owners of such land whose taxes become delinquent and who become financially able to redeem their property would refrain from redeeming their property in accordance with the provisions of Section 5724, General Code, because to do so would require them to pay more than the fair market value of the property at the time of redemption. If the General Assembly had not recognized the possibility of such a situation by making provision for sale at an amount less than the tax delinquency, as I have already pointed out, some property might be lost for many years if not forever, as a source of tax collection.

I can see no reason why an owner should not be accorded the same right as a stranger to bid at the delinquent tax sale of such property. In fact, there are reasons why he should be permitted to bid for the purchase of such property. He is more familiar with the property and should have a better idea of its value and would be disposed to place a higher bid than a stranger. In such event the taxing entity would profit. Furthermore, since the taxing entity would receive no more money from the sale whether the property is purchased by the owner or a stranger to the title, I feel that considerations of public policy should favor the owner retaining the title to his property even though the sale to him is considered nothing more than another method of redeeming the property from delinquent tax sale.

To me it is improbable and contrary to human instincts and inclination to say that to permit an owner to become a purchaser at delinquent tax sale would encourage owners to let their taxes go delinquent with the intention and design of purchasing the property at delinquent tax sale and evading the payment of a portion of the tax burden which had accrued against their property. No reasonably prudent person would run the risk of losing his property in order to gain the small saving which might result therefrom. Since the bid of the owner must be higher than all others if he is to become the purchaser, the state is benefited and not injured and it is therefore in the public interest to permit the owner to become a purchaser at tax sale.

In view of all this, it is my opinion that an owner of land who has permitted the taxes on his land to become delinquent can become the purchaser of that land with all the rights of and on equal terms with any other member of the public at a sale conducted pursuant to the authority of Section 5718-3, General Code.

Turning to the phase of your question which relates to forfeited land sales, I find that Section 5744, General Code, supplements the provisions relating to forfeiture contained in Section 5718-1c, General Code, which I have already discussed. Section 5744, General Code, reads as follows:

“In addition to the land and town lots forfeited to the state as provided in section 5718-1c, every tract of land and town lot offered for sale in foreclosure proceedings, as provided in the next preceding chapter, and not sold for want of bidders shall also be forfeited to the state. Such forfeiture of lands and town lots offered for sale in foreclosure proceedings shall be effective when the court by entry shall order such lands and town lots forfeited to the state, which order shall be made only after representation by the prosecuting attorney that no further order of sale is to be issued. A copy of such entry shall be certified to the county auditor. Thenceforth all the right, title, claim and interest of the former owner or owners thereof shall be considered as transferred to, and vested in, the state, to be disposed of in compliance with all provisions of this chapter.”

It is important to note that under the above section, after certification to the county auditor of a court entry ordering land forfeited to the state, “all the right, title, claim and interest of the former owner or owners thereof shall be considered as transferred to, and vested in, the state”.

Section 5746, General Code, providing for the redemption of forfeited lands, reads as follows:

“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.”

It will be noted that the person who has permitted the taxes on his land to become delinquent and whose land has been forfeited to the state is described in this section as the "former owner". The state will relinquish its claim to such land on payment of "all the taxes, assessments, penalties and interest due thereon at the time of such payment" before it has disposed of the land.

Sections 5750 to 5773, inclusive, General Code, relate to the sale of forfeited lands. Your request for my opinion specifically mentions Section 5752, General Code, which reads in part as follows:

"The auditor in each county, on the day set for said sale shall attend at the court house and offer for sale the whole of each tract of land as contained in the list heretofore provided for, at public auction, to the highest bidder for an amount sufficient to pay the taxes, assessments, penalties, interest and costs which stand against it. He shall offer each tract separately, beginning with the first tract contained in the list. If no bid is received for any of said tracts in an amount sufficient to pay the taxes, assessments, penalties, interest and costs which stand against it, the auditor may offer such tract for sale forthwith, and sell it for the best price obtainable, irrespective of the amount of taxes, assessments, penalties, interest and costs due upon it. He shall continue through such list and may adjourn the sale from day to day until he has disposed of or offered for sale each tract of land specified in the notice. He may offer a tract of land two or more times at the same sale. * * *

Such sale shall convey the title to said tract or parcel of land, divested of all liability for any taxes, assessments, penalties, interest and costs due at the time of sale, which remain after applying thereon the amount for which it was sold."

It is clear that under the above section as well as in the case of sale for delinquent taxes there may be a sale for an amount less than the tax delinquency and that such a sale will "convey the title * * * divested of all liability for any taxes, assessments, penalties, interest and costs due at the time of sale".

The purchaser at such sale, upon returning to the county auditor the certificate of sale and upon payment of a fee, is entitled to a deed which clearly conveys title free from any tax delinquency due at the time of sale under the terms of Section 5762, General Code, which reads as follows:

"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 therefor, in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs, or assigns. When a tract of land has been duly forfeited to the state and sold agreeably to the provisions of this chapter, the conveyance of such real estate by the county auditor shall extinguish all previous title thereto and invest the purchaser with a new and perfect title, free from all liens and encumbrances, except taxes and installments of special assessments and reassessments not due at the time of such sale, and except such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which the land was forfeited, became due and payable."

It is clear from these sections dealing with forfeited lands, as was the case with sections dealing with delinquent lands, that the general assembly has created no prohibition against the person who permitted the taxes on his land to become delinquent becoming the purchaser of that land at tax sale. The reasons set forth in my answer to that phase of your question dealing with foreclosure of the state's lien for taxes are applicable here and lead me to a conclusion similar to the one at which I arrived in that phase of your question. I am fortified in this conclusion by the additional fact, as pointed out in my discussion of Sections 5744 and 5746, General Code, that in these sections dealing with forfeited lands there has been an actual transfer of title from the delinquent taxpayer to the state at the time these lands are offered for sale.

It is my opinion, therefore, in answer to the second phase of your question, that an owner of land who has permitted the taxes on his land to become delinquent and whose land has been duly forfeited to the state, can become the purchaser of that land with all the rights of and on equal terms with any other member of the public at a sale conducted pursuant to the authority of Section 5752, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General