

for the needs of a county, the commissioners are to be empowered and authorized to treat and care for tubercular persons in their own county.

It is noted that no specific provision is made for the disposition of the proceeds of sale of an interest in a district hospital, and in consideration of the last above observation and in the light of section 2567 G. C., which secures the money realized to the proper fund, such specific action by the General Assembly does not seem necessary. The holding of the former opinion is concurred in, although the conclusion herein reached is based to some extent on different reasons. A distinction has been made herein between a hospital and a dispensary, which the former opinion did not make, and to that extent the former opinion is modified.

You are therefore advised that where a county has joined in the erection of a district tuberculosis hospital, in which hospital there is not suitable accommodations afforded and where the trustees have failed and refused to provide additional accommodations and because of such conditions such county has withdrawn from such district tuberculosis hospital and has sold its interest therein, such county, with the consent of the state board of health, may use the proceeds of such sale to erect and maintain a county tuberculosis hospital.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2833.

DELINQUENT LAND SALES—WHERE TRACT OR LOT IS CERTIFIED
DELINQUENT AND CONTINUES TO BE SO FROM YEAR TO YEAR—
NEED NOT BE AGAIN ADVERTISED AND CERTIFIED DELIN-
QUENT UNTIL REDEEMED OR SOLD ON FORECLOSURE.

COLUMBUS, OHIO, January 28, 1922.

If tract or lot is certified delinquent and continues to be delinquent from year to year, it should not be again advertised and certified delinquent until it is redeemed or sold on foreclosure.

HON. JOHN P. PHILLIPS, JR., *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—You have requested the advice of this department as to the correctness of a certain paragraph found in Circular No. 195 issued by the Tax Commission of Ohio under date October 9, 1917, and relating to the administration of the delinquent land tax laws of the state as amended 107 O. L. 735.

The paragraph concerning which you inquire is as follows:

“If a tract or lot is certified delinquent and continues to be delinquent from year to year, it should not be again advertised and certified delinquent until it is redeemed or sold on foreclosure.”

In this connection you call attention to the provisions of sections 5704, 5705, 5708 and 5718 of the General Code as so amended.

The circular referred to by you was submitted to this department before it was sent out, and the paragraph in question was approved. See Opinions of Attorney-General, 1917, Vol. II, 1846. However, the Attorney-General acknowledged that he entertained considerable doubt on this point. The opinion, in so far as it deals with this paragraph of the circular, is as follows:

"The sixth instruction is inconsistent with an implication arising from section 15 of the act, designated as section 5718 G. C., which seems to contemplate the recovery in the action therein provided for of the 'amount of eighty-five cents due from the defendants' for each year of delinquency 'for advertising and issuance of certificates.' This arises from the phrase 'for the delinquency of each year.' On the other hand, however, there is the statement in section 11 to the effect that land which has once been certified delinquent shall be so carried on the duplicate until it is redeemed. There are practical difficulties in the way of readvertising the land as delinquent during each of the three years intervening between the first advertisement and the foreclosure of the lien. Thus by sections 5678 and 5679 of the General Code, which are unrepealed, it is declared that when the taxes have not been paid on an entry of real estate at the December or June collections, such taxes with the penalties therein authorized shall be due and payable in December following with the entire taxes for the current year. This makes two years' taxes due at once, and the amount of such two years' taxes would have to be the amount set forth in the preliminary certificate authorized by section 9 of the act, section 5712 G. C.. If, then, another similar certification would have to be made for such tract in the succeeding year, the amount thereof would include all that had been theretofore certified. In other words, if there were annual certifications under said section 9, they would be cumulative in amount and therefore misleading. I do not think the Legislature intended this to be done, but required the preliminary certificate referred to in section 9 as a means of establishing the status of the land as delinquent, which status should continue until redemption. Therefore I agree with the sixth instruction, though entertaining considerable doubt thereon."

The sections referred to by you may be briefly abstracted as follows:

"Sec. 5704. Each county auditor shall cause a list of delinquent lands in his county to be published once a week for two consecutive weeks, between the twentieth day of December and the second Thursday in February, next ensuing.

* * * * *

There shall be attached to the list a notice that the delinquent lands will be certified to the Auditor of State as delinquent, as provided by law."

"Sec. 5705. Delinquent lands as defined in this act shall mean all lands upon which the taxes, assessments and penalties have not been paid for two consecutive semi-annual tax paying periods."

"Sec. 5706. Before advertising such list of delinquent lands and lots, the county auditor shall compare it with the duplicate in the office of the County treasurer, and strike therefrom all lands or town lots upon which the taxes, assessments and penalty of the preceding year, with the taxes and assessments of the current year, have been paid, and advertise the remainder as provided in this chapter."

"Sec. 5718. 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, pen-

alties 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."

Sections 5704 and 5705, above quoted, do not in and of themselves require more than one publication for lands that have become delinquent. Section 5708 does not seem to shed much light upon the question. Section 5718 contains, as was acknowledged by the former Attorney-General, an intimation to the contrary of the conclusion reached by the Tax Commission.

Other provisions of the same act and chapter which ought to be noted, are as follows:

"Sec. 5711. The county auditor shall send by mail, to the Auditor of the State, one paper containing a list of delinquent lands, and a copy of the account of the printer, as sworn to by him, and allowed by the auditor."

"Sec. 5712. The county treasurer, or his deputy, and the county auditor, or his deputy, shall attend at the court house in the county, on the second Tuesday in February, in conformity with the notice prescribed in the first section of this chapter, and at and after the hour of ten in the forenoon, the county auditor or his deputy shall proceed to make, in triplicate, a certificate to be known as a delinquent land tax certificate for each tract of land, city or town lot or part of lot contained in such advertisement, on which the taxes, assessments and penalty have not been paid, describing each tract of land, city or town lot the same as it is described on the tax duplicate, and the valuation thereof as shown upon said tax duplicate, and the amount of taxes, assessments and penalty thereon due and unpaid, and stating therein that the same has been certified to the Auditor of State as delinquent. Said county auditor or his deputy, shall continue from day to day with the making of said certificate until one complete certificate is made for each and all of said tracts of land, city or town lots or parts of lots contained in such advertisement, and upon which said taxes and assessments have not been paid. The original of said certificate of all the tracts of land, city or town lots or parts of lots, shall be forwarded to the Auditor of State, the

duplicate and triplicate thereof to be kept, one in the county treasurer's office and one in the county auditor's office, bound in book form. The original duplicate and triplicate of each certificate shall be signed by the county auditor, or his deputy and countersigned by the county treasurer, or his deputy. Interest at the rate of eight per cent per annum shall be charged on the duplicate against the delinquent lands, city or town lots or parts of lots certified by the county auditor on such certificate."

"Sec. 5714. The county auditor shall enter upon the tax duplicate, showing such lands, delinquent, the words 'Certified Delinquent,' and such entry on said duplicate shall be deemed and taken to be notice to all purchasers or other persons acquiring any right, title or interest in or to the lands described in said certification, of the prior right and lien of the state under the provisions of this act."

"Sec. 5715. The auditor shall transfer the entry 'Certified Delinquent,' from the tax duplicate of one year to the tax duplicate of the next year, and if such land has been transferred, this entry 'Certified Delinquent' shall follow the land in the new owner's name, unless the taxes, assessments and penalty, together with the interest due, have been paid."

It is clear from the sections just quoted that delinquent lands once certified to the Auditor of State as such acquire a certain status on the tax list and duplicate of the county. It is clear, also, from a re-examination of section 5718 that the final certificate to be filed with the Auditor of State at the expiration of four years from the first certification includes "the taxes, assessments, penalties and interest (which have not been paid for four consecutive years)." In other words, under the original certification the unpaid taxes for four years are collectible. If new advertisements and certificates were required for each of these years, then, if as a result of the first quadrennial certification under section 5718, the amount of money covered thereby was made through foreclosure proceedings, the delinquent taxes would thus be paid; whereas, if a new certificate were required in each year of delinquency, the several certificates issued in the meantime would become nugatory.

Cumulative evidence of the correctness of the former holding is found in section 5743 which speaks of the record of certified delinquent lands, indicating that when land once gets on the record, spoken of here, it continues until it is redeemed, and no new action is necessary in the premises.

The statutes are admittedly self-contradictory in many respects, but on such reconsideration of the matter as given at this time, it is the opinion of this department that the former opinion should be adhered to.

Respectfully,
JOHN G. PRICE,
Attorney-General.