

December 23, 2020

The Honorable Cecilia M. Cooper
Ashtabula Prosecuting Attorney
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, Ohio 44047-1092

SYLLABUS:

2020-006

1. A board of county commissioners may authorize the payment of delinquent taxes and assessments, in a sum not to exceed five percent of the delinquent amount, to a county land reutilization corporation for vacant-land sales and tax foreclosures. R.C. 5721.19(D)(2). However, vacant-land sales and tax foreclosures for which a payment is authorized in this way must be conducted pursuant to R.C. 5721.18 and 5721.19.
2. A board of county commissioners cannot, pursuant to R.C. 5723.18, authorize the collection and distribution of any amount of delinquent taxes and assessments to a county land reutilization corporation for forfeited-land sales.
3. The phrase “collections of delinquent real property, personal property, and manufactured and mobile home taxes and assessments,” as used in R.C. 321.261(B), includes collections made pursuant to the forfeited-land sale provisions of R.C. Chapter 5723 and R.C. 5723.18.



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OPINION NO. 2020-006

The Honorable Cecilia M. Cooper
Ashtabula Prosecuting Attorney
Ashtabula County Courthouse
25 West Jefferson Street
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Dear Prosecutor Cooper:

Your predecessor requested an opinion asking whether certain fees may be collected on tax-delinquent, vacant, and forfeited properties. I have framed your questions as follows:

1. R.C. 5721.19(D)(2) authorizes a board of county commissioners to credit up to five percent of the collections from foreclosures on tax-delinquent lands to a county land reutilization corporation (commonly referred to as a “county land bank”). You ask whether this authorization applies to collections from vacant-land sales and tax foreclosures.
2. You also ask whether the credit to a county land bank that a board of county commissioners can authorize pursuant to R.C. 5721.19(D)(2) applies to collections from sales of forfeited land. If the answer is no, you ask whether a board of county commissioners can adopt a similar fee pursuant to R.C. 5723.18.
3. You also ask whether a board of county commissioner’s resolution adopted pursuant to R.C. 321.261(B) would apply to delinquent

real-property taxes and assessments collected through a forfeited-land sale conducted under R.C. Chapter 5723.

I

When a property owner does not pay property taxes, the property becomes delinquent. The county auditor compiles a list of all delinquent lands and delinquent-vacant lands in the county. R.C. 5721.01 and 5721.011. The county prosecutor may then bring a foreclosure action against the delinquent property pursuant to R.C. 5721.18. If the foreclosed property is sold at auction, the proceeds of the sale are distributed pursuant to R.C. 5721.19.

If, however, the foreclosed-delinquent property does not sell after two attempts, the property is forfeited to the state or a political subdivision. R.C. 5723.01(A). Forfeited lands are generally governed by Revised Code Chapter 5723. Forfeited lands may be sold, and the proceeds of the sale are distributed pursuant to R.C. 5723.18.

For a fuller description of the foreclosure and forfeiture processes, *see generally* 2015 Op. Att’y Gen. No. 2015-005.

II

Your first question is this: Can a board of county commissioners pass a resolution requiring that up to five percent of collections made in connection with vacant-land sales and tax foreclosures be transferred to a county land bank? The answer is a qualified “yes.” Such a resolution would be permitted *assuming* the vacant-land sales and tax foreclosures were carried out pursuant to the procedures specified in R.C. 5721.18.

As an initial matter, R.C. 5721.19(D)(2) authorizes a board of county commissioners to provide, by resolution, up to five percent of the collections from

these foreclosures to a county land bank. To quote R.C. 5721.19(D) itself:

Except as otherwise provided in division (B)(1) of section 5721.17 of the Revised Code, upon the confirmation of a sale, the proceeds of the sale shall be applied as follows: ... (2) Following the payment required by division (D)(1) of this section, the part of the proceeds that is equal to five per cent of the taxes and assessments due shall be deposited in equal shares into each of the delinquent tax and assessment collection funds created pursuant to section 321.261 of the Revised Code. *If a county land reutilization corporation is operating in the county, the board of county commissioners, by resolution, may provide that an additional amount, not to exceed five per cent of such taxes and assessments, shall be credited to the county land reutilization corporation fund created by section 321.263 of the Revised Code to pay for the corporation's expenses.* If such a resolution is in effect, the percentage of such taxes and assessments so provided shall be credited to that fund.

(emphasis added).

The italicized sentence makes clear that a resolution permitting transfer to a county land bank is allowed in at least some circumstances. You ask whether such a resolution is permitted in connection with collections made via “vacant-land sales and tax foreclosures.” Provided the money is collected through the sale of property foreclosed upon under R.C. 5721.18, the answer is “yes.” R.C. 5721.18, as explained above, permits the foreclosure of delinquent property. And R.C. 5721.19(D) governs the distribution of proceeds following the *sale* of such

property. So, provided the collections made via “vacant-land sales and tax foreclosures” are made in connection with land foreclosed upon under R.C. 5721.18, the proceeds can be distributed in the manner permitted by R.C. 5721.19(D)(2). And one way to permissibly distribute the funds is to transfer, under a resolution passed by the board of county commissioners, up to five percent of the sale to the county land bank.

I caution, however, that this conclusion applies only if the original foreclosure proceeding was brought pursuant to R.C. 5721.18. Your request refers generally to “tax foreclosures.” The Revised Code, however, contains multiple procedures that can be used to bring a tax-foreclosure proceeding, and a different chapter of the Revised Code defines a “tax foreclosure sale” as “a sale of delinquent land pursuant to foreclosure proceedings under sections 323.25 to 323.28, 323.65 to 323.79, or section 5721.14 or 5721.18 of the Revised Code.” R.C. 5722.21(A)(4); *see also* 2015 Op. Att’y Gen. No. 2015-005, Slip Op. at 3-5; 2-40 to 2-42 (distinguishing between foreclosure proceedings conducted pursuant to R.C. 323.25 and R.C. 5721.18); 2014 Op. Att’y Gen. No. 2014-020, Slip Op. at 2-5; 2-168 to 2-170 (distinguishing between foreclosure proceedings conducted pursuant to 5721.14 and 5721.18). These other tax-foreclosure proceedings contain their own provisions governing how proceeds are to be distributed, and those provisions do not reference R.C. 5721.18 or 5721.19. *See, e.g.*, R.C. 323.28; 323.73; 5721.16. R.C. 5721.19(D)(2) would not apply to sales of land foreclosed upon under any section other than R.C. 5721.18.

III

You next ask whether a board of county commissioners can, pursuant to R.C. 5723.18, authorize the collection and distribution of any amount of delinquency collections to a county land

bank for forfeited-land sales. I conclude that it cannot.

A board of county commissioners is a creature of statute, and may exercise only those powers conferred upon it expressly by statute or as may be implied by necessity to in order to facilitate the exercise of another express power. 2015 Op. Att’y Gen. No. 2015-27, Slip Op. at 2; 2-271 to 2-272. 2009 Op. Att’y Gen. No. 2009-40 at 2-296.

R.C. 5723.18 contains no provision allowing for such a distribution. Nor does any other section of Revised Code Chapter 5723. Nor is such a distribution necessary to facilitate the exercise of some other express power.

In addition, I do not view the authorization found in R.C. 5721.19(D)(2) as applying to forfeited-land sales. R.C. 5721.19 speaks to distribution of proceeds from the sale of delinquent lands and delinquent-vacant lands sold pursuant to R.C. 5721.18. *See above* 4–5. It has nothing to say about proceeds from the sale of *forfeited* lands, which are generally governed by Chapter 5723.

Because R.C. 5721.19(D)(2) does not apply to the sale of forfeited lands, and because no similar statute applies to proceeds from the sale of forfeited lands, the answer to your second question is “no.”

IV

Your final question pertains to R.C. 321.261(B). That statute authorizes boards of county commissioners, upon the request of a county treasurer, to designate by resolution that “an additional amount, not exceeding five per cent of all collections of delinquent-real property, personal property, and manufactured and mobile home taxes and assessments, shall be deposited in the treasurer’s delinquent tax and assessment fund and be available

for appropriation by the board for the use of the [county land reutilization] corporation.”

You ask whether a resolution adopted under R.C. 321.261(B) would apply to delinquent real-property taxes and assessments collected through a forfeited-land sale conducted under R.C. Chapter 5723. I conclude that the answer is “yes.” R.C. 321.261 is applicable to “*all* collections of delinquent real property, personal property, and mobile home taxes and assessments.” (emphasis added). A sale of forfeited land is conducted primarily “for the purpose of securing the unpaid taxes.” 1996 Op. Att’y Gen. No. 96-047 at 2-177. *See also Bauman v. Guckenberger*, 148 Ohio St. 292, 299-300, 74 N.E.2d 369, 373 (1947); *Dubin v. Greenwood*, 139 Ohio St. 546, 549, 41 N.E.2d 240, 241 (1942) (“What the state does acquire, upon forfeiture of lands for 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.”); 1991 Op. Att’y Gen. No. 91-027 at 2-148; 1947 Op. Att’y Gen. No. 47-1640 at 89 (“There can be no doubt but that forfeited land sales were designed as a method for the collection of delinquent real estate taxes and assessments.”) In other words, a forfeited-land sale affects the “collection[] of real property ... taxes.” R.C. 321.261. The money collected is thus subject to R.C. 321.261, and can be distributed in the manner that statute permits.

For the sake of clarity, I wish to emphasize that funds collected under R.C. 321.261 are distinct from the funds that may be authorized by R.C. 5721.19(D)(2). Indeed, money collected under these statutes is placed in different funds. Collections authorized under R.C. 321.261(B) are “deposited” into the treasurer’s delinquent tax and assessment collection fund and is “available for appropriation” by the board of county commissioners for use by the county land bank. In contrast, the fee authorized by R.C. 5721.19(D)(2) is “credited” to the county land bank, and makes no

mention of a subsequent appropriation by the county commissioners.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A board of county commissioners may authorize the payment of delinquent taxes and assessments, in a sum not to exceed five percent of the delinquent amount, to a county land bank for vacant-land sales and tax foreclosures. R.C. 5721.19(D)(2). However, vacant-land sales and tax foreclosures for which a payment is authorized in this way must be conducted pursuant to R.C. 5721.18 and 5721.19.
2. A board of county commissioners cannot, pursuant to R.C. 5723.18, authorize the collection and distribution of any amount of delinquent taxes and assessments to a county land bank for forfeited land sales.
3. The phrase “collections of delinquent real property, personal property, and manufactured and mobile home taxes and assessments,” as used in R.C. 321.261(B), includes collections made pursuant to the forfeited land sale provisions of R.C. Chapter 5723 and R.C. 5723.18.

Respectfully,



DAVE YOST
Ohio Attorney General