

MAINE STATE LEGISLATURE

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January 2, 1945

To Joseph H. McGillicuddy, Treasurer of State
From Abraham Breitbard, Deputy Attorney General

This office is in receipt of your memorandum of the seventeenth of November, requesting our interpretation of Chapter 14, Sections 77, 78 and 79 of the Revised Statutes of 1944.

Your inquiry relates to the time within which lands forfeited to the State for non-payment of taxes under these provisions must be sold by the Treasurer of the State in order to preserve the lien for taxes on lands in places not incorporated. We understand from your inquiry that it has been the practice in the past for the Treasurer to hold these sales in November of the second year following the year for which the tax was assessed by the Legislature.

We think that sales by the Treasurer should be held in November following the year for which the tax is assessed when time permits it, as hereinafter explained.

Section 74 of said chapter provides for the taxation of these lands by the Legislature.

Section 76 provides for the assessment by the County Commissioners for a due proportion of county taxes.

Section 77 provides for notice of these taxes to be given by the Treasurer to the owners and the time fixed is "within three months" after the assessment for the first or current year and for the following year "within three months after one year from such assessment." The last sentence of said section is as follows:

"Said lands are held to the state for payment of such state, county, and forestry district taxes, with interest thereon at the rate of 6% to commence upon the taxes for the year for which such assessment is made at the expiration of 6 months and upon the taxes for the following year at the expiration of 18 months from the date of such assessment."

It has been the custom of the Legislature at each biennial session since 1939 by an emergency measure, to assess the tax for each year of the biennium; hence, the assessment became effective when the act was approved. The date of assessment, however, would vary, depending on the day the legislative act of assessment became law.

It is to be noted from the above quotation that "the expiration of 6 months" and "the expiration of 18 months" are "from the date of such assessment." It is therefore, important to bear in mind the date of the assessment in the steps set forth in the following sections, to effectively burden the owner of the land in the event that the lands are not redeemed within the periods set forth.

Section 78 provides:

"Owners of the lands assessed as provided in section 74 may redeem them by paying to the treasurer of state the taxes with interest thereon within 1 year from the time when such interest commences. . . Each part or interest of every such township or tract upon which the state or county taxes so advertised are not paid with interest within the time limited in this section for such redemption shall be wholly forfeited to the state, and vest therein free of any claim by any former owner."

Section 79 then provides that "lands forfeited as provided in Section 78 shall annually in November be sold by the treasurer of the state at public auction to the highest bidder," prior to which notice must be given within the time therein provided.

Section 81 provides for redemption at any time before the sale or after the sale "within a year."

As already noted, it has been the custom for the Legislature to assess these taxes by emergency measure and from my investigation I found that such an act was passed as late as April 26, in 1941. In other years it was earlier than this. Usually, sessions of the Legislature do not last beyond April 26th. Accepting that date for the purpose of the illustration, the interest on the tax assessed for the current year would commence to run 6 months thereafter, or October 26, 1941. The forfeiture then, under Section 78, would occur 1 year thereafter, or October 26, 1942. Under Section 79, as before noted, "lands thus forfeited" are to be sold in November. In the case given, the sale could properly take place in November, 1942, as all the notices, whether by advertising or personal service, could be given in time sufficient to sell in November of that year.

The date that I have above chosen, as I said before, is the latest date that has come to my notice. Usually it was in March or the early part of April, perhaps the first week in April. In that case, there would be more time to allow for the sale in November.

The question was raised in Keyes vs. State of Maine, 121 Maine 306. The court, however, found it unnecessary to decide the point.

The question there was whether a sale in the year 1902 for taxes for years other than those that were committed to the treasurer for the year 1900 was valid. At first glance, it would appear that it was conceded that a sale after a lapse of two years from the date of assessment was valid. But in 1902, when the sales there involved took place, the interest period commenced 1 year after the assessment for the first year of the biennium and two years after the assessment for the following year. The forfeiture to the state where the tax was not paid was, as now, one year from the time when the interest commenced. Therefore, at that time, two years must have elapsed before the forfeiture accrued. It also appears that sales were then held annually in September.

In 1905, by Chapter 69, the time when interest commenced to run was shortened to 6 months and 18 months from the date of assessment, as it now appears. In 1909, by Chapter 226, the month when sales were to be held was changed from September to November.

These amendments lead us to believe that by these changes, in the one instance shortening the time in which the forfeiture was to accrue and in the other postponing ~~the~~ month in which the sale was to take place from September to November, the intention of the Legislature was to make it possible to have the sale in November of the year following the year for which the tax was assessed; so that the taxes would be collected with due diligence and without the attendant delay caused by the longer periods before the forfeiture accrued.

Whenever a forfeiture of property is involved, our courts have held that a strict compliance with the statute was essential in order to enforce the forfeiture; hence, the burden was on the purchaser to show that every essential step was complied with. Otherwise, the sale was invalid and the title obtained thereunder failed.

We, therefore, advise you that after the date of the assessment by the Legislature the steps provided for by the quoted sections of the statute must be strictly followed and if the forfeiture occurs prior to the month of November of that year, so that the notices may be given within the time provided in Section 79, then the sales must take place during the month of November of all "lands this forfeited", in that year. But IF the forfeiture does not accrue in time to allow proper notices to be given prior to the sale in November, then the sale may take place in November of the following year.

AB:c

cc: State Tax Assessor David H. Stevens