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Blanchard Township Trustee
Elwanda Hastings, Fiscal Officer
300 Pine Avenue
Dunkirk, Ohio 45836

Re: Purchase of Properties

Dear Elected Officials:

You recently inquired about your township's ability to purchase real property at a tax foreclosure sale, clean it up and then resell it. Your question is "may the township purchase tax foreclosure real property"? The short answer is yes.

Counties, municipal corporations, and townships are included within the term "political subdivision," *see* R.C. 5713.081 and R.C. 5713.081(C).

Under Ohio law, a county may institute foreclosure proceedings against real property for the non-payment of taxes and assessments one of three ways pursuant to R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18. First, R.C. 323.25 provides that, when taxes charged against an entry on the tax duplicate are not paid within the prescribed time, the county treasurer may enforce the lien for the taxes by civil action. Secondly, pursuant to R.C. 5721.18, the prosecuting attorney may institute a foreclosure

proceeding in the name of the county treasurer to foreclose the lien of the state in a court or board of revision having jurisdiction. And finally third, in lieu of using the judicial foreclosure proceedings and other proceedings and remedies available under R.C. 323.28-.28 or R.C. Chapters 5721, 5722, or 5723, a county board of revision may, in accordance with R.C. 323.65-.79 foreclose the state's lien for real estate taxes upon abandoned land. R.C. 323.66(A). Hardin County at the moment utilizes the second method under 5721.18 O.R.C.

Your township may purchase this property at the tax foreclosure sale for the amount of taxes and court costs that are due and owing, regardless of what the fair market value of the property. The opening bid at a treasurer TAX foreclosure sale is the amount of tax liabilities owed on the property plus the court costs. You are bidding along with other individuals and will receive the property subject to the taxes and court costs IF you have the winning bid. With this purchase method you compete with others and may or may not have the winning bid.

If a treasurer tax foreclosure property is not bid upon then the state statute (5703.01 O.R.C.) authorizes a court to order real property forfeited to a political subdivision involved in the foreclosure proceedings. The statute states that, when real property has been twice offered for sale and not sold for want of a bidder in foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, or **R.C. 5721.18**, the prosecuting attorney shall certify this information to the court conducting the proceedings. R.C. 5723.01(A)(2). After a court receives the notification, "the court shall notify the political subdivision and school district in which the property is located, and the county land reutilization corporation in the county and offer to forfeit the property to the political subdivision, school district, or corporation, or to an electing subdivision as defined in [R.C. 5722.01], upon a (timely filed) petition from the political subdivision, school district, or corporation." R.C. 5723.01(A)(3). If a political subdivision requests through a petition to receive the property through forfeiture, the forfeiture of the real property "is effective when, by entry, the court orders [the property] forfeited to the political subdivision." *Id.* The court then certifies "a copy of the entry to the county auditor and, after the date of certification, all the

right, title, claim, and interest of the former owner is transferred to and vested in the political subdivision.”*Id.*

As stated in the previous paragraph, pursuant to 5723.01(A)(3), any political subdivision in which property that is sought to be forfeited for non-payment of taxes and failing to sell at a treasurer’s tax sale may be claimed by said political subdivision by the filing of a petition within 10 days of the receipt of the notice of intent to forfeit. As stated, Treasurer tax foreclosure suits are filed pursuant to R.C. 5721.18. If the political subdivision is an “electing subdivision” as defined in R.C. 5722.01, they take the forfeited property free and clear of all of the taxes and assessments that have accrued and are due as of the time the deed is transferred to the subdivision.

To be an “electing subdivision”, a township must have adopted a resolution pursuant to R.C. 5722.02 that adopts and implements the procedures set forth in R.C. sections 5722.02-5722.15, which essentially details the creation and implementation of a land reutilization program. I am unaware if Blanchard Township has done this.

A second method to receive forfeited property is if the political subdivision is NOT an electing subdivision, but complies with R.C. 5722.21, which allows for the political subdivision to declare by resolution to acquire delinquent realty for a public purpose. The political subdivision may take the forfeited property free and clear of all taxes and assessments that have accrued, **IF THEY OBTAIN CONSENT AND A RELEASE** from each taxing authority that is entitled to said taxes and assessments. Such consent can be obtained on a case by case basis or with a blanket sign off by each taxing authority. If any taxing authority does not agree to forego their interest, the liens shall continue.

As noted above, the political subdivision has 10 days to file a petition with the Court to claim any forfeited land. The statute is silent as to what the petition should contain. However, I would suggest that the petition contain a statement declaring the political subdivision’s intent to claim the land, as well as a copy of either the documentation showing the political subdivision is an “electing subdivision” or if it is not an electing subdivision have proof of compliance with RC 5722.21, i.e. releases from each taxing authority. If the political subdivision is not able to produce the

documentation for either of those procedures, it should note in the petition that it is taking the land subject to all existing liens and assessments.

I would also advise you that if the parcel is forfeited and no petition is filed or resolution is created with the necessary consents then the property is forfeited to the State, and at a future date, it will be offered for sale at an Auditor's Sale, which strips the property of all the delinquent taxes, assessments, and costs. At an Auditor's Sale, an attempt will be made to obtain a bid of the full amount due for delinquent taxes, assessments, and court costs; however, if no bid is obtained, the property is sold for the best offer to be paid.

To be able to clarify more clearly any questions your township may have regarding tax foreclosure properties and resale you may want to schedule an appointment with my office and discuss them with Assistant Prosecutor, Siobhonne Ward, who handles the tax foreclosures for the Treasurer. She can give your township guidance on how it can obtain real property at a tax foreclosure sale or if the property does not sell then how to later obtain it as forfeited property.

Once your township has the property and "it is no longer need for township purposes" you may sell it. Your township will need to pass a resolution stating this fact as well as a description of the property. *See* O.R.C. 505.10.

Hopefully, this gives you some guidance in the future on what to do.

Sincerely,

Bradford W. Bailey
Hardin County Prosecuting Attorney

BWB/jp
cc: Steve Wykes, Blanchard Township Trustee, 12238 TR 40, Dunkirk, Ohio 45836