

proceedings are so tarnished by fraudulent, or negligent, or improper conduct on the part of the officers, that the result of the election is unreliable, the entire returns will be rejected."

The Supreme Court of Appeals of the State of Missouri, in the case of *Horsefall vs. School District of the City of Salem*, 128 S. W. 33, said in the fourth branch of the syllabus:

"Where a statute provides specifically that a ballot not in a prescribed form shall not be counted, the statute is mandatory and must be enforced; but where the statute merely provides that certain things shall be done, the statute is directory merely, and the test as to the legality of a ballot is whether or not the voters were given an opportunity to express, and fairly expressed their will."

I am of the opinion that it is the duty of the board of elections of Jackson County at this time to canvass the abstracts showing the returns of the election for members of the board of education of Scioto Township Rural School District, as those abstracts have been certified to them, and to determine therefrom the two persons receiving the highest number of votes for members of the board of education and to certify those two persons as having been elected members of the board of education in said Jackson Township Rural School District.

If, after this certification is made, the election is contested in the manner provided for by Sections 4875-166, et seq., a question of whether or not this election is a legal election will become material and will be decided by the appropriate court in which the contested proceedings is instituted. It would be presumptuous for me to say how the court would decide the question. I have, however, herein referred to some of the authorities bearing on the question.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2296.

APPROVAL, ABSTRACT OF TITLE TO LAND IN VILLAGE OF WOODSFIELD, MONROE COUNTY—JOHN BURGBACHER.

COLUMBUS, OHIO, February 19, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval Abstract of Title, Warranty Deed and other files relating to the proposed purchase of a parcel of land in the Village of Woodsfield, Monroe County, Ohio, which is now owned of record by one John Burgbacher. This parcel of land which is in the form of a square with dimensions stated in feet of 120 x 120, is more particularly described in the deed therefor tendered by John Burgbacher and wife to the state, as follows:

"Beginning at the Northeast corner of lot No. 24, in Morris and Mooneys' Addition to the town of Woodsfield; thence S 26° 30' W 120 feet along the West line of Third street, to the Southeast corner of said lot; thence N 63° 30' W 120 feet to the Southwest corner of said lot; thence N 26° 30' E 120 feet along the East line of an Alley, to the Northwest corner of said lot; thence S 63° 30' E 120 feet to the place of beginning, and containing 0.329 of an acre, more or less, and being the same premises conveyed by Emma L. Burkhart and Edward K. Burkhart to the Grantors herein, by a Warranty Deed dated November 27th, 1931, and recorded in Volume 102 at page 253 of the Deed Records of Monroe County."

The first deed of conveyance in and by which this parcel of land was segregated from the larger acreage as a part of which this parcel had formerly been owned and held, was a deed executed by one W. T. Morris and wife to John Smith, under date of June 27, 1887. In this deed the parcel of land thereby conveyed was therein described as follows:

"Situated in the corporation of Woodsfield, County of Monroe and State of Ohio and known as part lot No. 55, Section 29, Township 4, Range 5, beginning for the same 15 feet, east of the northeast corner of lot 161 in Morris and Mooney addition to the Town of Woodsfield, north 120 feet parallel with lot 161; thence east 120 feet; thence south 120 feet; thence west 120 feet to the place of beginning for the same, more or less, but subject to all legal highways."

It is evident from the foregoing that there has been a change in the numbering of the lots affecting this parcel and other contiguous lands in said village. The information contained in Abstract of Title submitted is not such as to enable me to determine whether the parcel of land described in the deed tendered to the state by John Burgbacher is in all respects identical with that originally conveyed by W. T. Morris and wife to John Smith and thereafter passing by mesne conveyances in the chain of title to John Burgbacher. Neither have I had access to city or county plats from which this information might be supplied.

Assuming, however, upon information which has been given to me by the department that the parcel of land described in John Burgbacher's deed to the state is in all respects identical with that which came to John Burgbacher in the chain of title from the original conveyance by W. T. Morris and wife to John Smith above referred to, I am of the opinion that John Burgbacher has a good merchantable fee simple title to the parcel of land here in question, free and clear of all encumbrances except the inchoate dower interest of his wife, V. V. Burgbacher, and except the taxes and assessments on the property set out in the Abstract of Title.

Upon examination of Abstract of Title, I find some defects in the early history of the title of the larger acreage of land which included the parcel of land here in question. These defects are such that they could probably be cured by further information. However, on account of the great lapse of time since these defects appeared in the record with respect to this title, and in view of the fact that the particular parcel of land here in question has been owned and held by undisputed title by John Burgbacher and by his predecessors for nearly fifty years, I have no difficulty in waiving the early defects in the record title above referred to.

It appears from the Abstract of Title which is certified by the abstractor under date of December 12, 1933, that the taxes for the year 1933 on this property amounting to \$7.06 are unpaid and are a lien upon the property. It further appears that certain street assessments amounting in the aggregate to the sum of \$156.44 have been levied against this property and are a lien upon the same. It follows from what has been said above that the title of John Burgbacher to this parcel of land is hereby approved subject only to the exceptions above noted, with respect to taxes and assessments thereon.

Upon examination of the Warranty Deed tendered to the state by John Burgbacher and V. V. Burgbacher, his wife, I find that the same has been properly executed and acknowledged, and that the form of this deed is such that the same is effective to convey this parcel of land to the State of Ohio by fee simple title, free and clear of the inchoate dower interests of said V. V. Burgbacher, and with a general warranty on the part of said grantors that this property is free and clear of all encumbrances whatsoever.

Encumbrance Record No. 1425, which has been submitted as a part of the files relating to the purchase of the above described property, has been properly executed and the same shows a sufficient unencumbered balance in the proper appropriation account to pay the purchase price of this property, which purchase price is the sum of Six Hundred Forty (\$640.00) Dollars. It likewise appears from a recital in this encumbrance record as well as from a certificate executed by the President of the Controlling Board that, said board has approved the purchase of this property for the use of your department and that it has released for this purpose the money necessary to pay the purchase price of the property. Said Warranty Deed and Encumbrance Record No. 1425 are accordingly hereby approved and the same together with the Abstract of Title, Controlling Board Certificate and other files submitted to me are herewith returned to you.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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2297.

APPROVAL, BONDS OF WARREN CITY SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, February 20, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2298.

APPROVAL, BONDS OF WARREN CITY SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$18,000.00.

COLUMBUS, OHIO, February 20, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*