

“A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.”

If the instrument had been a negotiable instrument, within the Negotiable Instrument Law, the question might have arisen as between the township trustees and the Treasurer of State as to whether or not the township was not discharged from the obligation to pay the Treasurer of State the debts for which the warrant was accepted by such Treasurer of State. This position could hardly be maintained by the township trustees against the Treasurer of State since the instrument does not come within the provisions of the Negotiable Instrument Law for the sole duty of the Treasurer of State as to the presentment of the warrant was to present it within a reasonable time, and when received on September 3rd, such Treasurer was unable to determine whether or not he was entitled to receive the funds until he had procured evidence as to his authority to receive it.

The Treasurer of State being a state official, has only authority to receive such funds as the statutes give him authority to receive, and until such fact was determined he would have committed an illegal act had he deposited the warrant. This dispute, if any, between the township trustees and the Treasurer of State is no concern of the surety company which executed the bond which enabled the bank to receive the deposits of township funds, and it is highly improbable that a jury would hold in an action between the Treasurer of State and the township trustees, that such warrant was not presented within a reasonable time, which would be necessary in order to make the Treasurer of State liable for loss which may have been suffered by an unreasonable delay in presentment.

Specifically answering your question I am of the opinion that where a surety company is the obligor on a bond delivered by a bank as security for the deposit of township funds, as authorized by Section 3322, General Code, which bank subsequently became insolvent, the surety company is without legal authority to deduct from its loss the amount of outstanding warrants.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4321.

DISAPPROVAL: ABSTRACT OF TITLE TO LAND IN MILAN AND OXFORD TOWNSHIPS, ERIE COUNTY, OHIO.

COLUMBUS, OHIO, May 14, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted to me under date of May 2, 1932, for my opinion, the authorization of the controlling board under date of March 16, 1932, the incumbrance estimate dated April 25, 1932, the deed of Wade H. Roberts and wife, and R. E. Sickinger, single, to the State of Ohio, executed March 31, 1932, and the abstract of title for property situate in Milan and Oxford Townships, Erie County, Ohio.

The abstract was made up and certified as of April 11, 1932—10:20 A. M., by The Erie County Title Company, and contains an exhibit of all deeds, mortgages,

leases, liens, proceedings in court and other instruments which effect the title to the premises described, as they appear from an examination of the records in the Erie County Court House. No examination has been made in United States Courts. Accompanying the abstract is a blue print of the land in question and surrounding land.

At the beginning of the abstract the abstracter says that Erie was formed from a part of Huron County in the years 1838-39; that all records pertaining to the property in question prior to that time are in Huron County; and that his examination includes the period of Erie County records only. However, I think from an examination of the abstract that it is clear enough that any defects which might exist in the title prior to July 1, 1839, have been cured by lapse of time and the record title as it is shown to exist by the records abstracted. However, I desire to call attention to the defects which do exist from July 1, 1839.

1. In section 3 of the abstract it appears that in a deed from Ephraim Munger to Orrin Ruggles, reservation is made in favor of the public of "the right of a public highway over and across said land where the road now is laid, and in case of alteration of present road, the above reservation is to coincide with the road so altered. But said reservation is for no other purposes except for a public highway." The same reservation for road purposes is made in the deed from Orrin Ruggles to Jedidiah Sayre, in section 4. There is nothing further in the abstract referring to this road and it does not appear that the road has ever been vacated. It might be well to execute an affidavit concerning the vacation or existence of this road. However, if it is understood that the road is in existence and the State is taking title from Roberts & Sickinger subject to it under the general clause in the deed making the conveyance "subject to legal highways," then this defect might be ignored.

2. In section 9 Jedidiah Sayre's will is abstracted. In that will he makes a devise of a part of the land now under consideration to the children of Catherine Boss. Nowhere do the names of the children of Catherine Boss appear in the abstract; and there is nothing in the abstract to show whether subsequent grantors of the land under consideration are the children of Catherine Boss. An affidavit should be furnished showing the names of these children.

3. In section 13 appears a deed from Alexander Lord and Ida Lord, husband and wife, to Ebenezer Andrews; and also in section 14 appears a deed from Hannah Wallace to Ebenezer Andrews. There is nothing in the abstract to show what right or claim they have in this real estate other than a reference in the deeds that they were some kin to Jedidiah Sayre.

4. In section 16 it is recited by the abstracter that he finds no conveyance by deed or will out of Ebenezer Andrews and no administration upon his estate appearing of record, nor anything showing the names of all his heirs at law. Some evidence must be furnished showing his demise and the assumed rights of Rachel A. Andrews, Joseph H. Andrews, Ebenezer Andrews, Jr., and Eleanor Andrews, to deal with and convey the property as shown in sections 17, et seq.

5. In section 25 several parties, evidently members of the Andrews family, entered into an agreement with Charles P. Hanville, under date of July 26, 1918, granting him timber rights on the land. A release of this agreement should be furnished or an affidavit showing that Han-

ville has no further interest in the real estate for the purpose expressed in said contract.

6. In section 31 an authenticated copy of the will of William A. Andrews, deceased, was filed in Erie County on March 9, 1931. The original will was probated in Kings County, New York. The same section of the abstract also discloses certain proceedings in respect to the administration of his estate in Erie County, the last entry having been made June 26, 1931. The abstract does not show that the administration of this estate has been completed; does not show that all of his indebtedness has been paid; or other pertinent facts showing that this real estate is relieved from claims made against William A. Andrews or his estate. This assurance should be furnished by way of certified copies of Kings County Records or a bond.

7. The June, 1932, installment of taxes on property first above described as parcel No. 2 is unpaid. The abstract does not show the amount of this unpaid tax installment. Receipts should be furnished showing payment of all the 1931 taxes and assessments, if any. Of course, the taxes for the year of 1932 are now a lien upon said property.

The typewritten carbon copy of the action of the controlling Board under date of March 15, 1932, shows that approval has been given for the purchase of the land under consideration from Roberts and Sickinger for the sum of \$3,796.10.

The incumbrance estimate, No. 19, is dated April 25, 1932, and covers the payment of the sum of \$3,796.10 to Wade Roberts and R. E. Sickinger out of Division of Conservation—G-1 Lands—Bureau of Game Farms, 14-J account. The incumbrance estimate shows an unappropriated balance in this fund sufficient to cover this purchase. The estimate is approved by the finance director, Division of Budget, Conservation Commissioner and the Director.

The deed of R. E. Sickinger, single, and Wade Roberts, married, to the State of Ohio contains the same description as noted on the title page of the abstract and in the incumbrance estimate. It transfers the land in fee simple with warranty, free and clear from all claims and demands whatsoever, with a release of dower by Mary Roberts, wife of Wade Roberts; and therefore is adequate to convey the property being purchased by the Conservation Commissioner. I also note that the deed has been filed for record with the Recorder of Erie County and by him recorded in Volume 145, page 83 of the Erie County Deed Records. The form and execution of the deed is hereby approved.

The documents herein listed as received from you are returned for further attention.

Respectfully,

GILBERT BETTMAN,
Attorney General.