

2084.

APPROVAL, BONDS OF GETTYSBURG VILLAGE SCHOOL DISTRICT,  
DARKE COUNTY, \$25,000.00, SCHOOL IMPROVEMENTS.

COLUMBUS, OHIO, December 16, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2085.

APPROVAL, BONDS OF TRIMBLE TOWNSHIP RURAL SCHOOL DIS-  
TRICT, ATHENS COUNTY, \$11,000.00, SCHOOL IMPROVEMENTS.

COLUMBUS, OHIO, December 16, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2086.

APPROVAL, BONDS OF VILLAGE OF ST. HENRY, MERCER COUNTY,  
\$12,000.00, WATERWORKS IMPROVEMENT.

COLUMBUS, OHIO, December 16, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2087.

UNCERTIFICATED STOCK—SECTION 6373 GENERAL CODE CON-  
STRUED.

**SYLLABUS:**

*The determination of whether any given number of sales of uncertificated stocks constitutes a "disposal in the course of repeated and successive transactions of a similar character by the owner" is a question of fact to be submitted to the jury under proper instructions by the court.*

*Whether the sale of stock constitutes a "disposal made in the course of repeated and successive transactions of a similar character by the owner" is immaterial when*

*the sale is made by a natural person, not the underwriter of the security, who is a bona fide owner of the security and disposes of his own property for his own account.*

COLUMBUS, OHIO, December 17, 1924.

HON. NORMAN E. BECK; *Chief, Division of Securities, Columbus, Ohio.*

Dear Sir:—

I acknowledge receipt of your letter of recent date in which you submit the following inquiry:

"Turney and Sipe, Attorneys at Law, 401 Engineers Building, Cleveland, Ohio, have submitted the following statement of facts to this Department for its advice. We desire to have your opinion concerning the same. The facts are, to wit:

"The Star-Bair Oil Company was a corporation of Wyoming. No application was ever made to certificate its stock in Ohio and no authority was ever granted for the sale of the stock in Ohio. One T. who then was a stock salesman engaged in selling securities of a tire and rubber company, purchased certain of said stock from one J. who was the manager of said company and who sold its stock in Ohio. He also purchased certain stock from one B. who was also a stock salesman for the same tire and rubber company. T. claims to have paid 50c per share for the stock purchased from J. and \$1.00 per share for the stock purchased from B. He sold one hundred shares of stock to a stock salesman working under him in the sale of the rubber securities at one dollar per share, fifty shares to another salesman working under him in the sale of tire securities, at \$1.00 per share, and three hundred shares to M., the investor making complaint, at \$1.00 per share. T. claims the transaction legal upon the ground that he was dealing in his own property. At the time T. purchased the original stock from J. he made a payment on account and took an option for additional stock at 50c."

Query: Do the three sales of uncertificated stock under these circumstances constitute successive sales under the meaning of the statute?"

Section 6373-2 of the General Code of Ohio, so far as it is applicable to your question, reads as follows:

"The term 'dealer', as used in this act, shall be deemed to include any person or company, except national banks, disposing or offering to dispose, of any such security, through agents or otherwise, \* \* \* except:

(a) An owner, not the issuer of the security, who disposes of his own property, for his own account; when such disposal is not made in the course of repeated and successive transactions of a similar character by such owner; or a natural person, other than the underwriter of the security, who is a bona fide owner of the security and disposes of his own property for his own account."

It should be observed in the beginning that paragraph (a), quoted above, contains two types of exception from the definition "dealer":

- (1) An owner, whether a natural person or artificial;
- (2) A natural person.

From the statement of your question, it appears that the person selling the

stock referred to in your question, was a natural person, and if such is the case, the words "when such disposal is not made in the course of repeated and successive transactions of a similar character," do not apply.

I assume, however, that your inquiry is for the purpose of a general ruling on the question of how many sales of uncertificated stock must be made to constitute successive sales within the meaning of the language above quoted, as applied to other than a natural person.

The courts of Ohio have not had occasion to construe this language with relation to a case similar to that presented by your statement. Similar provisions have been construed by the courts of Michigan and of Minnesota.

The statute of Minnesota, so far as applicable, reads as follows:

"The term 'dealer' shall not include an owner, not issuer, of any stocks, bonds, investment contract or other securities so owned by him when such sale is not made in the course of continuous and successive transactions of a similar nature. \* \* \*"

In the case of *State vs. Summerland*, decided by the Supreme Court of Minnesota, May 8, 1923, N. W., 699, the court uses the following language:

"In *State vs. Gopher Tire & Rubber Co.*, 146 Minn. 52, it was held that an indictment charging an unlicensed issuer of securities with selling them to six different persons was not bad for duplicity. Whether each sale constituted a separate offense was not decided, but it was said that each was an incident of one continuous transaction, namely, the sale of securities without a license. It was also said that the indictment would not have been good if it had not alleged more than one sale. \* \* \*"

There is an implication in this language that an indictment under this statute which alleged more than one sale would be sustained as charging an offense under that section. This case does not decide, however, nor do any of the reported cases from that state decide, the number of such sales required to constitute sales "made in the course of continuous and successive transactions of a similar nature."

The provisions of the Michigan statute, so far as applicable, are as follows:

"Sec. 5. And, except as hereinafter provided, the provisions of this act shall not apply to the sale of any security in any of the following transactions; \* \* \*"

(c) In an isolated transaction in which any security is sold, offered for sale, or delivery, by the owner thereof, or by his representative for the owners account, such sale or offer for sale or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account, by such representative, and such owner or representative not being the underwriter of such security;" \* \* \*

"Sec. 10. \* \* \* Any person \* \* \* not the issuer, who shall in this state sell or offer for sale any of the stocks, bonds, or other securities issued by any foreign or domestic investment company, except the securities specifically exempted in this act, \* \* \* shall be deemed to be a dealer in such securities within the meaning of this act. \* \* \* The term 'dealers' shall not include an owner not issuer, of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature." \* \* \*

In the case of *People vs. Clum*, 213 Mich. Reps. 651, this provision of the statute was considered. There is nothing in this case which is decisive of the question as to

how many transactions must be had to bring them within the term of the act. But the court holds that the question of whether the defendant was a dealer within the meaning of the terms of the act was properly submitted to the jury as a question of fact.

Therefore, in the absence of specific decisions of the courts of this state construing Section 6373-2, it is my opinion that the following may be accepted as the proper basis for action by your department:

(1) The determination of whether a person selling such securities is a dealer under the Ohio statute is a question of fact for the determination of the jury.

(2) There is no specific number of sales which in and of itself would render the transaction a "disposal made in the course of repeated and successive transactions of a similar nature by such owner." Any number of sales, however, greater than one might under proper circumstances constitute a disposal in the course of repeated and successive transactions of a similar nature.

(3) Whether the sale of stock constitutes "a disposal made in the course of repeated and successive transactions of a similar character by such owner" is immaterial when the sale is made by a natural person, not the underwriter of the security who is a *bona fide* owner of the security and disposes of his own property for his own account.

In the particular case which you submit the question of whether the person selling the stock was in fact a *bona fide* owner. While all of the facts with relation to this transaction are not stated, it is significant with relation to this question that a part of the stock was at least taken on an option and that the title had not passed at the time the same was sold.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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2088.

APPROVAL, BONDS OF CITY OF LANCASTER, FAIRFIELD COUNTY,  
\$17,500.00, STREET IMPROVEMENTS.

COLUMBUS, OHIO, December 17, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2089.

DISAPPROVAL, BONDS OF HICKSVILLE VILLAGE SCHOOL DISTRICT,  
DEFIANCE COUNTY, \$3,000.00.

COLUMBUS, OHIO, December 17, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re: Bonds of Hicksville Village School District, Defiance County, \$5,000.00.

Gentlemen:—

An examination of the transcript for the above issue of bonds discloses that