that they impose the duty of obedience on those who come within their purview. But it does not therefore follow that every slight departure therefrom should taint the whole proceeding with a fatal blemish. Courts justly consider the chief purpose of such laws, namely, the obtaining of a fair election and honest return, as paramount in importance to the minor requirements which prescribe the formal steps to reach that end." *Bowers* vs. *Smith,* 111 Mo., 45.

"It is a well recognized principle of statutory construction that election laws are to be liberally construed when necessary to reach a substantially correct result; and to that end, their provisions will, to every reasonable extent, be treated as directory, rather than mandatory." *Duncan* vs. *Shenk,* 109 Ind. 26.

"The statutory requirement for opening and closing the polls is directory only, hence where election officers kept the polls open and received votes half an hour later than the legal time, the result is not invalidated thereby. Chagrin Falls Election, 91 O. S., 308."

Specifically answering your question, I am of the opinion that in the event that no litigation is commenced to prevent the question from going on the ballot, and said election is held, and the levy carries, it is unlikely the courts would hold invalid the tax levy authorized by reason of the fact that the resolution of necessity required by Section 5625-17, General Code, did not reach the election board prior to September 15th, other statutory steps having been complied with.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1044.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF G. F. THOMAS, JEFFERSON TOWNSHIP, ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, October 17, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have resubmitted for my examination an abstract of title, warranty deed, encumbrance estimate and Controlling Board's certificate relating to a tract of two hundred ninety-nine (299) acres of land in Jefferson Township, Adams County, Ohio, of which one G. F. Thomas, trustee in trust for the Bank of Peebles, Peebles, Ohio, is the owner of record, and which property is more particularly described in Opinion No. 3123 of this department directed to you under date of January 10, 1929.

This matter has been the subject of two prior opinions, Opinion No. 3123, above referred to, and Opinion No. 79, directed to you under date of February 1, 1929. In the former opinion the title of G. F. Thomas, as trustee in trust for the Bank of Peebles, was disapproved on account of certain substantial and jurisdictional defects in the proceedings in the Court of Common Pleas of Adams County, whereby the said G. F. Thomas, as trustee aforesaid, obtained a record title to the lands here in question.

You have now submitted to me an extension of the abstract of title which

shows that an application to redocket the case of Anna E. Best, administratrix of the estate of A. J. Best, deceased, vs. G. F. Thomas, Trustee in trust for the Bank of Peebles, Peebles, Ohio, Anna E. Best, Olive Myers, Charles Best, Lillian Sheeley, William Best, Maurice Best and Dwight Best, was made in the Court of Common Pleas of Adams County; that the application was allowed and summons duly issued to, and served upon all parties to said action except Maurice Best and Dwight Best, minors under the age of fourteen years; that the Common Pleas Court of Adams County has quieted title in the premises in question as against Anna E. Best, Olive Myers, Charles Best, Lillian Sheeley and William Best and all persons claiming under them and perpetually enjoined said parties from setting up a claim to the premises, or any part thereof.

You have not, however, furnished proof to me that a guardian has been appointed for the infant defendants, Maurice and Dwight Best, and served with summons.

As pointed out in my Opinion No. 3123, dated January 10, 1929, although it may not have been necessary that such guardian ad litem be appointed in order to effect the sale of said lands by the plaintiff as administratrix on her petition for that purpose (Section 10782, General Code), it would seem that such appointment was necessary in order to effect the sale of said lands upon the mortgage interests set up in the cross petition of G. F. Thomas, as trustee in trust for the Bank of Peebles.

The abstract shows that a proper summons was issued and that personal service was had upon the two minors, but it having been made the duty of the court to appoint a guardian ad litem, and the records showing that such guardian was not appointed, the question arises: What was the effect of such failure on the title?

It would seem under the statute that if at any stage of the proceedings it appears that the proceedings are to be contested, a guardian ad litem ought to be appointed for infant defendants under fourteen years of age.

Judge Rockel, in Rockel's Complete Ohio Probate Practice, Second Edition, Vol. I, page 844, commented:

> "The matter of appointing a guardian ad litem, I fear is too often regarded as a matter of form * * * Such is not its object * * * This minor defendant by reason of want of years, is unable to know his rights or protect them. * * * "

In Ewing vs. Hollister, admr., 7 Ohio, Part 2, page 138, the Ohio Supreme Court held in the syllabus, that in proceedings to sell decedent's real estate, by executors or administrators, it is sufficient if infant heirs appear by their general guardian. In the instant case, however, there is nothing to show that the infants' mother, who was served, together with the infants, was other than their natural guardian.

At common law, the natural guardian might be able to act for the infants, but under the law of Ohio, no guardian can be appointed or perform any legal act as a guardian without having given a bond.

In Nichols Brothers vs. Koshinick, 32 O. C. D., 388, it was held in the syllabus that a judgment against an infant defendant, sued personally is not void, but will remain subject to review until a sufficient time after the removal of disability of infancy shall have elapsed to bar such review.

However, in view of the defect in the court proceedings relating to the service of the minors, Maurice and Dwight Best, there is nothing for me to do but to disapprove the title of G. F. Thomas, trustee in trust for the Bank of Peebles, in

and to these lands, and to advise you not to purchase the same unless proceedings are taken by the said G. F. Thomas, as trustee in trust for the Bank of Peebles, to clear his title to these lands as against this objection.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate and Controlling Board's certificate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1045.

PRISONER—HOW EFFECTED BY REPEAL OF SECTIONS 2174 AND 2175, GENERAL CODE.

SYLLABUS:

1. *The Ohio Board of Clemency has authority to grant paroles, conditional releases or absolute releases to prisoners who violated their paroles or conditional releases and were declared delinquent and returned to the Ohio Penitentiary and are now serving the unexpired period of the maximum term of their sentence in accordance with the provisions of Section 2174 prior to its repeal.*

2. *Prisoners who are serving the unexpired period of the maximum term of their sentence, by virtue of the provisions of Section 2174 of the General Code, and have a second sentence to serve at the termination of the service of their first sentence, may be granted a release by the Ohio Board of Clemency from the service of the unexpired term of the maximum term of their first sentence, by virtue of the repeal of Section 2174 of the General Code.*

3. *Prisoners who were at large on parole or conditional release and who committed a new crime and were resentenced to the Ohio Penitentiary prior to the repeal of Section 2175, General Code, must serve their second sentence at the termination of their first or former sentence.*

4. *Prisoners whose paroles were revoked and who are serving the unexpired period of the maximum term of their sentence, are not eligible to parole until they are recommended as worthy of such consideration by the warden and chaplain of the penitentiary, and such recommendation has been published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced.*

COLUMBUS, OHIO, October 17, 1929.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

> "House Bill 362, passed by the last General Assembly, becomes effective July 24, 1929, and repeals Sections 2174 and 2175 of the General Code. Several questions arise in the administration of the law following this repeal on which we desire your official opinion:
>
> (1) In the case of a prisoner who has heretofore been paroled, has violated his parole and has been brought back to serve the maximum sentence provided by law, does the repeal of Section 2174 enable the Board of Clemency to grant parole before the expiration of such maximum term