

Section 13527 reads as follows:

"If, on the examination, the magistrate finds that the accused has committed an offense of a higher grade than that charged, he may be held to answer therefor."

This statute is the only one bearing on this question and the word "may" is used instead of "must," making it discretionary with the court where the charge is filed under a state or federal law, but not mandatory.

The courts of a municipality do not have final jurisdiction in felonies.

In view of the above, it follows that a defendant may be tried under either the state law, federal law, or an ordinance, for manufacturing liquor.

If an ordinance makes it an offense to manufacture a distilled liquor, the courts of the municipality have final jurisdiction.

If the charge is for manufacturing a distilled liquor and it is brought under a state or federal statute the courts of a municipality do not have final jurisdiction, and should bind over or discharge the defendant under the usual rules in such proceedings.

If the charge is filed under a state or federal law and is of a less degree than a felony and it develops that a felony has been committed the court of the municipality may bind over to a court of competent jurisdiction, but the statute does not make such action mandatory.

Respectfully,

C. C. CRABBE,

*Attorney-General.*

934.

SALE OF STOCK—DEPARTMENT OF COMMERCE MAY LIMIT PROMOTION CHARGES TO LESS THAN FIFTEEN PER CENT—MAY REFUSE CERTIFICATE OF COMPLIANCE WHEN SALE IS ON GROSSLY UNFAIR TERMS.

*SYLLABUS:—*

1. *The Department of Commerce is vested with a broad discretion in the matter of the amount of commission and promotion charges to be allowed in the sales of stock by a broker and may limit such charges to less than fifteen per cent.*

2. *The Department of Commerce is vested with discretion in determining whether in any particular case stock is being offered on grossly unfair terms, and the amount of commission to be paid is one of the factors to be taken into consideration in deciding whether the terms are grossly unfair.*

3. *Section 6373-12 applies only to the issuance of stock of an insurance company. Section 6373-14a makes fifteen per cent the maximum of commission and promotion charges which may be allowed. Subject to that limit, the Department of Commerce has a broad discretion in determining whether stock is offered for sale under grossly unfair terms, and the amount of commissions and promotion charges to be paid is only one of the elements to be considered. It is the duty of the Department of Commerce to issue a certificate of compliance only when convinced, in view of all the facts, that the sale is not on grossly unfair terms.*

COLUMBUS, OHIO, November 28, 1923.

HON. CYRUS LOCHER, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date in which you submit the following statement of fact, accompanied by three inquiries, as follows:

"A corporation organized for the purpose of loaning money on real estate, buying, selling and dealing in commercial paper, mortgages, bonds and other securities, with a capital of preferred stock of \$100 par value of each share and an equal number of shares of common stock of no par value. The incorporation propose to buy all the common stock of no par value at a nominal price and sell the preferred stock at par value and pay into the treasury of the corporation 85% of the proceeds, retain 15% for commissions, promotion and organization.

1. Upon application for a certificate of compliance has the Chief of the Division of Securities any discretion in limiting commission and promotion charges if the said charges do not exceed 15%?

2. What, if any, discretion has the Chief of the Division of Securities in deciding whether said stock is being offered on grossly unfair terms when the corporation has no property, does not propose to exchange stock for property, and not to exceed 15% is paid for commissions and promotion?

3. Section 6373-12 provides that the amount of commission, promotion and organization shall in no case exceed 15%. Section 6373-16 provides that the proposed disposal of such securities shall not be on grossly unfair terms. Is it the duty of the Chief of the Division of Securities to issue a certificate of compliance, within the meaning of the statutes, under this state of fact, that is, is the meaning of the statutes that in a case where all other elements are eliminated and when not to exceed 15% is paid for commissions, promotion and organization, that the stock is not offered on grossly unfair terms? Or what, if any, discretion has the Chief of the Division of Securities in such a case?"

Your inquiries will be answered in the order submitted.

First: Section 6373-12, to which you refer, applies only to the promotion of insurance companies, and the figure of 15% mentioned therein has no application to the case of companies such as you describe. Section 6373-14a has the effect of limiting the promotion charges, including the commission, to 15% of the proceeds of the sale of the securities. This is a maximum and the words "not less than eighty-five per cent of the proceeds of each sale," indicate that it is not intended to be a minimum. Within the limitation of this section, the question of how much shall be allowed for commission and promotion is one which is entirely within the discretion of your department, so long as that discretion is not abused, and the amount of such allowance is a factor to be considered in determining whether the proposed disposal is on grossly unfair terms.

Your department, therefore, has the undoubted right to limit commission and promotion charges to a figure less than fifteen per cent, if in your judgment a commission of fifteen per cent, in connection with the other terms of the sale, constitutes a sale on grossly unfair terms.

Second: The terms of Section 6373-16, quoted in your letter, confer upon your department a very broad discretion, and whether the disposal of any particular stock will be on grossly unfair terms, is always a question of fact for your determination in view of all information which you are able to obtain.

Third: Section 6373-12 relates only to promotion of insurance companies and does not fix a standard by which you are required to judge what is fair in other cases. It is the duty of your department to issue a certificate of compliance only when you are convinced as a matter of fact, in view of all the information which you are able

to get, that the sale is not on grossly unfair terms. The language used in the act is an indication of the intent on the part of the legislature to empower you to exercise a very broad discretion; and it is only in case of a manifest abuse of that discretion that your decisions can be reversed.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

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935

APPROVAL, BONDS OF CITY OF WASHINGTON C. H. FAYETTE COUNTY;  
\$1,100.00. SIDEWALK CONSTRUCTION IN TEMPLE STREET.

COLUMBUS, OHIO, November 28, 1923.

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

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936:

APPROVAL, BONDS OF WASHINGTON C. H. FAYETTE COUNTY, \$3,300.00,  
STREET IMPROVEMENT BONDS FOR IMPROVEMENT OF RAWLINGS  
STREET.

COLUMBUS, OHIO, November 28, 1923.

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

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937.

APPROVAL, BONDS OF GUERNSEY COUNTY, \$83,340.00, TO PAY THE  
COUNTY SHARE OF COST OF ELIMINATING GRADE CROSSINGS BY  
CONSTRUCTING A VIADUCT.

COLUMBUS, OHIO, November 28, 1923.

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