

1947

1. HIGHWAY RIGHTS-OF-WAY—NEGOTIATIONS BETWEEN LANDOWNER AND STATE NEGOTIATOR—SALE TO STATE OF EASEMENT FOR HIGHWAY PURPOSES—ORAL UNDERSTANDING AS TO IDENTITY OF LAND—PRICE, TERMS OF SALE—NEGOTIATOR NOT AUTHORIZED TO BIND STATE BY CONTRACT.
2. DEED TO STATE HANDED TO NEGOTIATOR FOR TRANSMISSION TO DIRECTOR OF HIGHWAYS—ORAL “UNDERSTANDING THAT IT WILL NOT BECOME BINDING CONTRACT UNTIL IT HAS BEEN ACCEPTED BY HIGHWAY DEPARTMENT”—DEED NOT EFFECTIVE TO TRANSFER TITLE UNTIL STIPULATED PRICE TENDERED TO LANDOWNER.

SYLLABUS:

Where, in the course of negotiations between a landowner and a state negotiator who is not authorized to bind the state by contract, for the sale to the state of an easement for highway purposes, an oral understanding is had as to identity of the land, as to the price and as to the terms of the sale which were to be cash, and a deed to the state duly signed and acknowledged is handed to the negotiator for transmission to the Director of Highways with the oral “understanding that it will not become a binding contract until it has been accepted by the highway department” such deed does not become effective to transfer title until the stipulated price is tendered to the landowner.

Columbus, Ohio, June 26, 1950

Hon. T. J. Kauer, Director of Highways
Columbus, Ohio

Dear Sir:

I have your letter requesting an opinion upon the question of when title to a highway easement passes to the state of Ohio when the acquisition thereof is made in the course of what you advise is your practice. Your letter requesting such opinion and outlining such practice is as follows:

“The question of when title passes under the Ohio law in connection with the acquisition of highway rights-of-way has been of some concern to this Department for some time.

It has been the practice to negotiate with the property owner and after an agreement has been reached, the property owner executes an "Easement for Highway" purposes and delivers the same to the negotiator, with the understanding that it will not become a binding contract until it has been accepted by the Highway Department. The acceptance becomes manifest when the bill to the State Auditor requesting payment for the easement is signed by the State's Right of Way Engineer. The authority to do so has been delegated to the Right of Way Engineer by proper journal entry.

In view of the fact that there are various ramifications to the problem of when title passes and a deed becomes effective, it is the request of this Department that you render an opinion on the question of when title passes in the acquisition of highway rights-of-way based on the above mentioned practice."

Since no mention is made in your letter of a written contract of sale and purchase, I assume that none is entered into in your practice. Since no mention is made in your letter of any agreement, either oral or written, expressly bearing upon the question of when title should pass, I assume that there is no such express agreement. I understand also that your negotiator does not himself have authority to bind either you or the State of Ohio by entering into a contract of purchase, or to accept an offer to sell to the State.

In the light of such assumptions and understanding, I infer that the "agreement" between the negotiator and the property owner to which you refer in your letter is but an understanding between them as to the identity of the land and rights therein which the landowner is willing to sell to the State, the price which he is willing to accept therefor and the terms of sale, that is, whether the price is to be paid upon consummation or at a later time; that a deed is then delivered by the landowner to the negotiator for your inspection and ultimately to effect the transfer of the land to the State upon consummation of the proposed transaction.

The interpretation which I place upon such acts of the landowner and the negotiator is that an offer by the landowner to sell to the State is thereby effected; that such offer is so submitted to the negotiator for transmission to you and that the only written evidence thereof is the deed so delivered for your inspection. Also, since no mention is made in your letter that such proposed acquisition is to be on other than a cash basis, I interpret that the terms of the sale so offered to be made by the land-

owner are cash as distinguished from deferred payment or payments. A further basis for such last mentioned interpretation is afforded by my general understanding of your practice in such cases and by my belief that you have no power under the law to acquire land on other than a cash basis.

Coming now to your question as to when title passes under a deed so transmitted to you, I think I may say, without citing authorities therefor, that it is a general rule of law that title passes under a deed and the deed becomes effective upon the delivery thereof to the grantee; but delivery is not necessarily effected by any and every manual transfer to a named grantee. A delivery, as that term is understood in the law, is effected only when there is an intention on the part of the grantor to deliver.

“Words or conduct of the grantor evidencing his intention to render his deed presently operative and effectual so as to vest the estate in the grantee, and to surrender control over the title, is necessary and sufficient to constitute a valid delivery.

Anything which clearly *manifests the intention of the grantor* that his deed shall presently become operative and effectual, that he loses control over it, and that the grantee is to become possessed of the estate, constitutes a sufficient delivery to pass title if the grantee accepts the conveyance. *It is obvious that this rule rests upon the intention of the grantor, as manifested by his words and acts and the circumstances surrounding the transaction;* and generally, without an intent to pass title, no delivery occurs even though there has been a manual tradition of the deed. The question of whether or not there has been a delivery must therefore be determined upon the facts of each particular case, and, although certain principles are generally applicable, they do not furnish conclusive rules under all circumstances. * * *

(Underscoring ours.)

26 C. J. S., Sec. 41, Page 233.

“The physical act of passing a conveyance from grantor to grantee, * * * may be relatively unimportant. ‘Delivery’ is a word of well-defined meaning in law, and implies more than a mere change of possession. It is an indispensable concomitant of manual tradition that the grantor shall intend to divest himself of title.”

Belser v. American Trust Co., 13 P. 2d 951, 954, 125 Cal. App. 344.

There are two circumstances surrounding the transactions which so

occur in your practice which are outstanding and determinative of the question you ask. One of these is that the proposed sale is a cash sale; the other is that there is no express agreement to the effect that title will pass before the price is paid. It is not to be presumed, in the absence of an express agreement to that effect, that a man who sells his property for cash intends to part with his title before he receives his payment. To presume otherwise must necessarily be predicated upon the contradictory assumption that the sale, which was so a cash sale, was also a sale not for cash.

In the light of such circumstances of cash sale and no express agreement to transfer title before the money is paid, your statement that there is an understanding that it (I presume the deed) will not become a binding contract until it has been accepted by you, must be interpreted to mean that a bilateral contract to sell on the one hand and to buy on the other will be effected upon your acceptance of the offer so made. And I think I may add relative to such bilateral contract that it might and can only be effected by the communication of your acceptance to the man who made the offer.

It is my opinion that in the practice outlined in your letter, title passes only upon tender of payment of the stipulated price.

I feel impelled by the circumstances to add that I do not wish to be understood as tacitly or otherwise approving the practice outlined in your letter.

Respectfully,

HERBERT S. DUFFY,
Attorney General.