

In the case of *State ex rel. Wetmore vs. Stewart*, 26 O. S., 216, the relator applied for a peremptory mandamus not to determine his ultimate right to the office, but to compel the clerk to put him in possession of a certificate showing he received a majority of all the votes cast, upon which he might be enabled to assert his right to the office in some other legal mode. The court held:

“Mandamus will not lie to compel the clerk and judges to recanvass the poll books returned and furnish the relator with evidence upon which to contest the election in some other mode.”

There is a fair implication from this that if the relator had, at the proper time and with a view to correcting the returns and having a proper canvass made, made application for a peremptory writ of mandamus, the same would have been allowed. This is borne out by the last paragraph of the opinion of Gilmore, J., as follows:

“Therefore, the statute having provided an adequate and complete remedy by contest on appeal, of which the relator neglected to avail himself at the proper time, he is not entitled now to a mandamus to redress the grievance of which he complained.”

It is, therefore, my opinion that in cases in which the tally sheets show that the laws relating to the counting and tallying of ballots have not been substantially complied with, and such non-compliance is prejudicial to the substantial rights of parties or the public interest therein, the judges and clerks should be reassembled and a proper count of the vote cast be made as is required by sections 4933 G. C., et seq.

Respectfully,
C. C. CRABBE,
Attorney General.

3589.

ABSTRACT, STATUS OF TITLE, TO PREMISES LOCATED IN McCLAIN TOWNSHIP, SHELBY COUNTY, OHIO.

COLUMBUS, OHIO, August 18, 1926.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Examination of an abstract of title and other data submitted by you for my examination and formal opinion discloses the following:

The abstract as submitted was certified under date of July 22, 1926, and pertains to premises located in McClain township, Shelby County, Ohio;

“Being a part of tract No. 3, south half of section 12, town 8 south, range 4 east, as said south half of said section was aparted in a proceedings by the trustees of said township to sell school lands, a record of which proceedings is found in Volume 12, page 225, of the civil record of the court of common pleas, Shelby County, Ohio, said premises being a strip of land 25 feet wide (being a total of 50 ft. on each side of a central line described in the caption of the abstract to which this opinion is atached.”

Examination of said abstract discloses a sufficient title to said premises in Anna Mary Fleckenstein, subject to the following:

The abstract shows a gas and oil lease executed November 11, 1924, by the then owners, and afterwards assigned to Norwood Johnson, and John M. Slagle. Said lease appears of record in Record of Leases, Volume 6, page 490, Shelby County, Ohio.

The already executed warranty deed submitted by you will be sufficient to convey the premises to the State of Ohio when properly delivered. Encumbrance estimate No. 1509 covering the consideration for these premises has been regularly certified by the Department of Finance, under date of August 18, 1926.

You have also submitted evidence of the approval of this purchase by the Controlling Board under date of August 13, 1926. The abstract of title, warranty deed, and other data submitted by you are herewith returned.

Respectfully,
C. C. CRABBE,
Attorney General.

3590.

SECURITIES ACT—EXCEPTIONS PROVIDED IN SECTION 6373-14 OF THE
GENERAL CODE DISCUSSED—BOND FURNISHED FOR AGENTS OF
A DEALER MUST BE SIGNED BY THE DEALER AS PRINCIPAL.

SYLLABUS:

1. *Section 6373-14 of the General Code has reference only to the sale of securities "for the purpose of organizing or promoting any company, or assisting in the flotation of the securities of any company after organization." A dealer bringing himself within the exceptions set out in this section is not thereby exempted from the provisions of the securities law, but merely exempted from filing information required by that section. The securities must be qualified under the other provisions of the securities law unless exempted by other provisions.*

2. *Under the provisions of section 6373-3, the bond required to be filed for the agents of a dealer must be signed by the dealer as principal and may also be signed by such agent.*

COLUMBUS, OHIO, August 25, 1926.

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

DEAR SIR:—I acknowledge receipt of your letter in which you submit to this department two questions, which will be answered in their order.

Your first question is as follows:

"Section 6373-14—exceptions, reads as follows:

* * * This section shall not apply where the issuance of the securities has been approved by the public service commission or like body of any state of the United States or any province of the Dominion of Canada, or where the sale is made by or on behalf of an underwriter who, in good faith and not for the purpose of avoiding the provisions of this act, purchases the securities so afterward sold by him and pays therefor, in cash or its equivalent, before attempting to sell the same, not less than ninety percentum of the price at which such securities are thereafter sold by him."

"With reference to the underwriting of securities, kindly advise whether or not a licensed dealer may exempt securities so underwritten, from other than the issuer. For example: