

that extent I believe it is exclusive and no recovery could be had against the county auditor for the tax penalties replaced on the duplicate; however, to the extent that the legislature has not provided a remedy and loss has been suffered by the county by reason of the illegal act of the county auditor, the auditor and his bondsman would be personally liable, because of his neglect to faithfully perform the duties of his office.

Specifically answering your inquiries it is my opinion that:

1. When a county auditor has legally assessed and placed upon the tax duplicate a penalty against an entry of real estate for the reason that the taxes for the preceding half year were not paid at the time of the semi-annual settlement between the county auditor and the county treasurer, the county auditor has no legal authority to remit such penalty so added.

2. If, after the county auditor has legally placed a penalty on the tax duplicate he issues an abatement certificate for such penalty and removes it from such duplicate, such abatement certificate is *void* and the county auditor not only has the power but it is his duty to re-enter such item so removed on the duplicate unless after such item has been so removed the legal title to the item of property against which the penalty is taxed has been conveyed to a holder for value, who relied upon the tax duplicate as it existed at the time of his purchase; the county auditor and his bondsmen are liable for any loss occasioned by reason of such transfer.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4525.

APPROVAL, ABSTRACT OF TITLE TO LAND AT KENTON, OHIO, OF
THE KENTON BRICK AND TILE COMPANY.

COLUMBUS, OHIO, July 27, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title, deed, encumbrance estimate 1395, copy of approval of the Board of Control and a blue print, relating to the proposed purchase of a 1.82 acre tract of land at Kenton, Ohio, from The Kenton Brick and Tile Company.

Said abstract, certified under date of May 17, 1932, indicates that The Kenton Brick and Tile Company has a good and merchantable fee simple title to said property, subject to the following encumbrances:

1. A mortgage in the amount of \$7500 executed by The Kenton Brick & Tile Co. on January 29, 1931 to The Commercial Bank (Abstract, page 42), which mortgage was, on June 30, 1931, assigned by The Commercial Bank to The First Commercial National Bank of Kenton, Ohio (Abstract, page 43-44).

2. Tax liens, covering the second half of the year 1931 and all of the taxes for the year 1932.

Encumbrance estimate No. 1395 indicates that there is sufficient money in the proper appropriation account to finance this purchase.

The State Control Board has given its approval to the transaction, subject to the understanding that a good and sufficient guaranty is furnished which, in the opinion of the Attorney General's Office, will insure the State of the unrestricted use at all times of a railroad siding leading into said property.

The proposed deed is executed in proper legal form, and contains provisions which, in the opinion of the Attorney General, sufficiently protect the right of the State to use said railroad siding.

Enclosed please find all of the papers which were mentioned above as having been received.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4526.

WORKMEN'S COMPENSATION—PERSONS RECEIVING POOR RELIEF,
WORKING FOR POLITICAL SUBDIVISION — NOT ENTITLED TO
COMPENSATION—WHERE SUBDIVISION ALSO PAYS PERSON, HE
IS ENTITLED TO COMPENSATION.

SYLLABUS:

1. *When a person, who applies for relief as provided for in Section 3476 et seq. of the General Code and in pursuance thereof performs labor as provided for in Section 3493, General Code, is injured while performing such labor, he is not an employee within the meaning of the Workmen's Compensation Law of the State of Ohio and is not entitled to the benefits of that act.*

2. *When such person in performing labor under Section 3493, General Code, works on a project which is being financed by the gasoline tax moneys and enters into an agreement with the city that his name may be placed upon the payroll and the amount which he would receive as wages, if he were being paid wages which in fact he is not, may be turned over to the city and placed in the general revenue fund, his status is not changed. Such transfer of funds is unauthorized and illegal. Such person is not an employee within the meaning of the Workmen's Compensation Law.*

3. *A person who applies to a private charitable organization for relief and is required by that organization to perform labor for some other person or for some political subdivision, free of charge, before relief is given, is not working under a contract of hire nor engaged in the business of the organization; and if such applicant is injured while performing such work, he is not to be considered an employee within the meaning of the Workmen's Compensation Law and is not entitled to the benefits of that act.*

4. *Where a person applies to a private charitable organization or public officer for relief, and before he can obtain such relief is required to perform services for the public subdivision, and in the performance of such services the officers of the subdivision agree to pay him for the services which he renders at least a part of that which he is to receive, such person is an employee of the political subdivision within the meaning of the Workmen's Compensation Act, and in case he is injured he is entitled to the benefits of that act.*

5. *When an applicant presents himself to the department of charities for relief under the poor laws of the State of Ohio, and such department refers him to*