

board of education in the county are incompatible and cannot be held by one and the same person at the same time."

While section 2689, General Code, mentioned in the above opinion, has since been amended, and while sections 5649-3a, 5649-3b and 5649-3c, General Code, appearing in quotations in said opinion have since been repealed, nevertheless, the amendments of said section 2689 are immaterial, and sections 5625-19, 5625-24 and 5625-25 now contain similar provisions to those formerly appearing in sections 5649-3a, 5649-3b and 5649-3c. Hence, I feel that one person cannot hold the office of county treasurer and the position of clerk of a rural board of education simultaneously.

I see no incompatibility in the office of village treasurer and clerk of a rural school district, nor do I see any incompatibility in central committeemen holding the offices of either county treasurer or village treasurer and the position of clerk of a rural school district.

Hence, all the offices and positions which you mention in your third question are compatible, with the exception of the offices of village treasurer and county treasurer, and county treasurer and position of clerk of the board of education of a rural school district.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4886.

TORRENS LAW—CANCELLATION OF REGISTERED TITLE BY HEIRS OF LAND—EFFECTED BY SURRENDER OF CERTIFICATE OF REGISTRATION ISSUED IN NAME OF SUCH HEIRS.

SYLLABUS:

Where title to a tract of land has been registered under the provisions of section 8572-1, et seq., General Code, commonly known as the Torrens Law, and a certificate of registration is issued to the owner of the land as provided for in this law, the registered title to the land, upon the death of the owner thereof, can be canceled upon the application of the heirs of such deceased owner only by the surrender of a certificate of registration issued in the name of such heirs.

COLUMBUS, OHIO, January 9, 1933.

HON. F. H. BUCKINGHAM, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This is to acknowledge the receipt from you of a communication which reads as follows:

"The following question has been presented to me by the Recorder of Sandusky County, Ohio, relative to registering land titles under what is known as the 'Torrens Act.'—

'Mary F. died leaving a Will in which she devised certain real estate to her heirs. This real estate in question was registered land under the provisions of Section 8572-1 of the General Code, and sections fol-

lowing. An executor was appointed for her estate and there was sufficient personal property to pay all the debts. The heirs and devisees under the Will being desirous of selling said registered real estate, made out a deed signed by said heirs to a purchaser, and surrendered the certificate of registration owned by Mary F. to the one who purchased said registered land.

The Recorder refused to record the deed until a new certificate of registration was taken out in the names of the heirs as provided by Section 8572-42 G. C.

The heirs of Mary F. and the purchaser from them are not desirous of continuing to have the land registered, nor are they desirous of paying the costs and expenses of having a new certificate made according to Section 8572-42 merely for the purpose of transferring this property.

Section 8572-64a provides that any person owning real estate, the title to which is registered, may surrender this certificate to the County Recorder, who shall thereupon cancel said certificate of record, and thereafter said title shall be considered the same as if it had never been registered.

The County Recorder refuses to do this, in view of the fact that the original owner of the certificate, viz: Mary F., is now deceased, and cannot herself surrender the certificate.

We are wondering whether the devisees under Mary F's. will have a right as the owners of said real estate to surrender her certificate as provided in that section, or, whether said real estate can be removed from the provisions of this chapter without the necessity of going to the expense and trouble of having another certificate issued in the names of the heirs of Mary F."

Upon consideration of the statutory provisions referred to in your communication, I am of the opinion that the county recorder is correct in the position taken by him with respect to the question therein stated.

It will not be necessary for the purposes of this opinion to discuss or to even refer to the various statutory provisions relating to the registration of land title under the Torrens Law. It is sufficient to note that under the provisions of section 8572-25, General Code, every applicant for the registration of land owned by him who without fraud on his part receives a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all estates and encumbrances except those noted on the certificate itself, and except any one or more of the encumbrances specifically mentioned in this section of the General Code. By section 8572-26, General Code, it is further provided that the obtaining of a decree of registration and receiving a certificate of title shall be deemed as an agreement running with the land and binding upon the applicant and the successors in title that the land shall, subject to the provisions of said registration act, be and forever remain registered land.

However, by section 8572-64a, General Code, provision is made for the cancellation of the registered title to land upon the surrender by the owner of such land of his certificate of registration. This section provides in part as follows:

"Any person owning real estate the title to which is registered may surrender his certificate to the county recorder, who shall thereupon cancel said certificate of record, and thereafter said title shall be considered

the same as if it had never been registered. All deeds and mortgages heretofore filed conveying registered lands, the registration certificate of which has been surrendered as herein provided for, shall be recorded according to law, and thereafter the lands conveyed therein shall be considered the same as if they had never been registered."

It will be noted from the provisions of section 8572-64a, General Code, above quoted, that the person entitled to have the registered title to land canceled is the person who owns such land; and that such registration is to be effected by the surrender by such owner of *his* certificate to the county recorder, who is thereupon required to cancel said certificate of record. Clearly, under the provisions of this section, it is not sufficient for the owner of land, the title to which has been registered in the manner provided by this act, to effect a cancellation of such registered title by surrendering a certificate issued to his predecessor in title.

The present owners of the lands referred to in your communication are the devisees under the last will and testament of Mary F. Obviously, the only way in which these persons can obtain a cancellation of the registered title to these lands and thereby give to them the status of unregistered lands, is by surrendering to the county recorder a certificate of title issued in the names of such devisees, which certificate or certificates are to be issued under the authority of section 8572-42, General Code, which reads in part as follows:

"Upon the death of a registered owner his heirs or devisees or one or more of them, or the assignee for the benefit of creditors or administrators or executors or holder of an involuntary lien or charge against the interest of any such heir or devisee or their heirs or devisees, or an heir, devisee, administrator or executor of a deceased heir or devisee of such heir or devisee of a deceased registered owner, may at any time after the expiration of thirty days from his death, if he died intestate, or from the probate of his will and the election of the relict, if any, thereunder, if he died testate, make application to the court for registration of the title of the deceased in such heirs and devisees according to their respective rights and interests."

When the certificate or certificates of title are issued in the name of the devisees under the provisions of this section, such devisees may then as the owners of the property surrender to the county auditor their certificates of title for cancellation in the manner provided for by section 8572-64a, above quoted, and thereby obtain for such lands the status of unregistered lands.

To the objection that this procedure will entail additional expense upon the devisees, it may be observed that as the title to lands cannot be registered otherwise than by compliance with the provisions of the registration law, so lands once registered cannot be given the status of unregistered lands without compliance with this law.

By way of specific answer to your question, I am of the opinion that the lands referred to in your communication cannot be taken out of the provisions of the land registration law without the surrender to the county recorder of a certificate of title issued in the names of the devisees of Mary F., referred to in your communication.

Respectfully,
GILBERT BETTMAN,
Attorney General.