

the store making the sale described in the report was engaged in the wholesale business of trafficking in cigarettes.

The store making the sale here involved is one of a well-known company, which operates a large number of retail grocery stores. Undoubtedly such stores are engaged *primarily* in the retail business, and one or more isolated sales in quantities like that here involved would not in and of itself make such stores wholesalers. However, under the guise of conducting a retail grocery business, such stores cannot engage in the wholesale business of trafficking in cigarettes and avoid the tax imposed by law.

For the reasons above indicated, a specific answer to your question, other than that above set forth, is not given. It is believed, however, that the above discussion of the law will enable you properly to determine the question involved, when all the facts shall have been ascertained.

I am herewith enclosing copy of Opinion No. 300, above referred to.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1940.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF JACOB Y. DYKE  
AND E. B. HATFIELD, IN FRANKLIN TOWNSHIP, ROSS COUNTY,  
OHIO.

COLUMBUS, OHIO, April 6, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my opinion, under recent date, two abstracts of title, encumbrance estimate, a copy of the certificate of the action of the Controlling Board and a deed conveying certain property in Franklin Township, Ross County, Ohio, and more particularly described as follows:

*FIRST TRACT*—Part of the Virginia Military Survey No. 13.441, being bounded and described as follows: Beginning at a White Oak, corner to Survey No. 14.849 and Number 13.516 and running thence north Fifty (50) degrees West one hundred and fifteen (115) poles to a stake on Britton's corner to Survey No. 13.523, thence South with said Britton's line fifty-one (51) degrees West one hundred and thirty-four (134) poles to a stake, thence forty-three (43) degrees West fifteen (15) poles, thence South sixty-four (64) degrees East twenty-six (26) poles to a hickory, thence South eighteen (18) degrees East thirty-eight (38) poles to two (2) chestnut oaks, thence South forty-four (44) degrees East forty (40) poles to three (3) chestnut oaks corner to Survey No. 14.891 and No. 14.849, thence North fifty-eight (58) degrees East one hundred and sixty-six (166) poles to the place of beginning, containing ninety-nine and one-fourth ( $99\frac{1}{4}$ ) acres, be the same more or less.

*SECOND TRACT*—Being part of Survey No. 14.523, beginning at a large white oak near the top of the ridge, thence South ( $41\frac{1}{2}$ ) degrees East

15.6 poles to a white oak, thence South (62) degrees East (47.2) poles to a stone, thence South (39) degrees East (40) poles to a stone, thence South (57) degrees West (127) poles to a stone, thence North bearing East (135) poles, more or less containing thirty-five (35) acres, more or less.

The abstract covering the first tract above described, containing  $99\frac{1}{4}$  acres of land, sets forth nothing with respect to the title prior to a deed dated July 3, 1889, by which one Frank L. Cruikshank acquired title to said land from Nathaniel Wilson, and no reason for the omission of details in respect to the title of this tract prior to that time is furnished. From that time, however, the title is traced down to the acquisition of the title by Jacob Y. Dyke and E. B. Hatfield in March, 1924. I am unable to express an opinion in respect to the title to this tract of land unless a complete abstract of title thereto is furnished or unless sufficient information, of a positive character, showing that said deed under date of July 3, 1889, passed a fee simple title in said tract of land to said Frank L. Cruikshank, is furnished.

However, I deem it advisable to point out a few other defects in the partial abstract of title to said first tract of land above described:

1. J. F. Silver mortgaged this property to Harley Silver under date of February 14, 1895, to secure the payment of \$1,300.00. This mortgage is not cancelled of record. No due date of the obligation secured by this mortgage, or other data in respect to the payment thereof, is furnished, so that I am unable to say that this mortgage encumbrance and the record thereof has been quieted by the provisions of Section 8546-2, General Code, which provides that the record of any mortgage which remains unsatisfied or unreleased of record for more than twenty-one years after the last due date of the principal sum or any part thereof, secured thereby, as shown in the record of such mortgage, shall not be deemed to give notice to or to put on inquiry any person dealing with the land described in such mortgage that such mortgage debt remains unpaid or has been extended or renewed; and as to subsequent bona fide purchasers, mortgagees and other persons dealing with such land for value, then lien of such mortgage shall be deemed to have expired. Likewise, in the absence of information in the abstract, showing the due date of the obligation secured by said mortgage, I am unable to say whether any action on said mortgage or the obligation secured thereby is now barred by the statute of limitation.

2. At Section 13 of the abstract relating to this tract, a sheriff's deed under date of March 23, 1898, conveying said tract of land to one W. P. Pierce, is shown. Apparently, said deed was executed by the sheriff pursuant to certain proceedings in case No. 9363 on the docket of the Court of Common Pleas of Ross County, Ohio. There is, however, no abstract of the proceedings in said case showing the authority of the sheriff to convey and transfer the title of said J. F. Silver in said land to said W. P. Pierce.

3. At Section 14 of the abstract there is shown a deed by the sheriff of Ross County under date of March 12, 1904, which purports to convey and transfer the title of W. P. Pierce in said land to one W. S. Robison. The abstract does not disclose any authority whatever in the sheriff to execute and deliver this deed and for this reason, as in the case above noted, I can express no opinion with respect to the efficacy of the sheriff's deed to convey title to the land in question.

4. The abstract shows that under date of July 12, 1904, J. F. Swearingin, then the owner of record of said lands, mortgaged the same to one Philip Smith. This mortgage was given to secure the payment of the sum of \$150.00. This mortgage has not been cancelled of record. No due date of the obligation secured by said mortgage, or any other data with respect to the payment thereof, is furnished, so that I am unable to express any opinion as to whether the provisions of Section 8546-2,

General Code, are applicable, or whether any action on said mortgage and the encumbrance secured thereby is barred by the statute of limitation.

5. From the abstract it appears that all taxes on the property have been paid except those for the last half of the year 1927, which are due and payable in June, 1928, the amount of which is not stated by the abstracter.

The abstract submitted with respect to the second tract above described, containing 35 acres, does not set forth anything with respect to the title to said tract prior to a deed dated October 7, 1882, by which the sheriff of Ross County conveyed his property to one Elias Schemerhorn, and no reason for the omission of prior conveyances or proceedings relating to the title of this tract of land is furnished. From that time, however, the title is traced down to the acquisition of the same by Jacob Y. Dyke and E. B. Hatfield on March 14, 1925.

I am unable to express an opinion with respect to the title to this tract of land unless a complete abstract of title thereto is furnished or unless information, of a positive character, showing that said deed from the sheriff of Ross County to said Elias Schemerhorn had the effect of passing a fee simple title to the land, is furnished.

In addition to the objection just noted, I deem it proper to point out a few of the other defects in the partial abstract of title which has been submitted:

1. Aside from the fact that the abstract contains nothing prior to the deed of the sheriff of Ross County to Elias Schemerhorn in 1882, it likewise fails to show the proceedings by which the sheriff of Ross County obtained his authority to deed this property.

2. At Section 9 is shown a deed by the sheriff of Ross County under date of March 14, 1925, conveying said property to E. B. Hatfield and Jacob Y. Dyke. The abstract does not set out the court proceedings which authorized the sheriff to execute and deliver this deed. This information should, of course, be furnished.

The communication from the Secretary of the Controlling Board under date of March 20, 1928, a copy of which is submitted to me, indicates that the Controlling Board has approved the purchase from E. B. Hatfield and Jacob Y. Dyke of 134½ acres of land. This, I assume, covers the two tracts of land here in question. The encumbrance estimate, No. 3384, dated March 21, 1928, covers the payment to E. B. Hatfield and Jacob Y. Dyke of the agreed price of said lands out of the Division of Forestry, G-1 Lands, Appropriation Account, and the same indicates that there is a sufficient unexpended balance in said fund to cover this expenditure, but the Director of Finance does not certify to that effect. The estimate is approved by the Director of Department and the Bursar. The encumbrance estimate is hereby approved by me, subject to the requirement that the signature of the Director of Finance thereto be secured.

The deed to the State of Ohio for the property under consideration has been executed by E. B. Hatfield and Jacob Y. Dyke and their respective wives, Emma Hatfield and Pearl Dyke. This deed which was signed March 1, 1928, was executed before two witnesses and acknowledged by all of the grantors before a Notary Public of Pike County. This deed is in all respects in proper form, but I am unable to approve the title to the property thereby conveyed for the reasons above noted.

I am enclosing herewith said abstracts, deed, encumbrance estimate and certificate of the action of the Controlling Board with respect to the purchase of this property.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*