

3. At page 175 of the abstract, there is shown a mortgage deed executed by Henry Oatney and Clara Oatney, his wife, to Mary Uhl and Catherine Uhl, in the sum of \$3400. The abstract recites that this mortgage is not cancelled of record. This mortgage to the amount unpaid thereon is of course a lien on the premises.

4. The abstract is defective in not stating the amount of taxes that are a lien on the premises and the same should be corrected so as to furnish full and accurate information on this point.

I have examined the warranty deed tendered by Henry Oatney and Clara Oatney, his wife, with respect to the above described lands, and find that the same has been properly executed and acknowledged and is in form sufficient to convey a fee simple title in said lands to the State of Ohio.

I have examined encumbrance estimate No. 1385, covering the purchase of these lands, and find the same to be in proper form and properly signed. This encumbrance estimate shows that there are sufficient unencumbered balances in the appropriation account to pay the purchase price of said lands, and that said balances are properly applicable to the payment of said account.

I note in said encumbrance estimate a statement over the signature of the Director of Finance, that the Controlling Board has approved the purchase of these lands, in accordance with the authority vested in said board by Section 12 of House Bill No. 502.

I am herewith returning to you said abstract of title, deed and encumbrance estimate. All of these files should be again submitted to this department with the abstract, when corrected to meet the above objections.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2238.

CLASSIFIED SERVICE—EXPERTS—TECHNICAL ASSISTANTS—DESIGNATION OF BY INDUSTRIAL COMMISSION—BINDING ON CIVIL SERVICE COMMISSION—EXCEPTIONS.

SYLLABUS:

Where the Industrial Commission, pursuant to Section 1465-89a, General Code, at the time of employing a Referee and Supervisor of Publication and Printing, respectively, designated the same as experts or technical assistants, such designation is final and must be followed by The State Civil Service Commission, unless it appears that in making such designation there was gross abuse of discretion or fraud.

COLUMBUS, OHIO, June 18, 1928.

The State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“We are enclosing herewith copies of our letter of April 10, 1928, to the chairman of the Industrial Commission of Ohio, and their reply under date of May 21, 1928, enclosing copies of corrected resolutions on the minutes of the Industrial Commission, all of which refer to two specific positions under that Commission and Opinion No. 1933 of the Attorney General of Ohio.

This Commission respectfully desires to request your opinion in answer to the following question: Are the specific positions of Referee, occupied by C. S. Miller, and that of Supervisor of Publication and Printing, occupied by H. M. Paul, positions requiring Experts or Technical Assistants within the meaning of Section 1465-89a of the General Code, taking into consideration the corrected minutes of the Industrial Commission as of February 21, 1928, and February 27, 1928, relative to the two positions in question?"

With the above communication, you have submitted a copy of your letter of April 10, 1928, directed to the Chairman of the Industrial Commission, and a copy of the reply thereto, under date of May 21, 1928. You have not submitted copies of the resolutions correcting the minutes of the Industrial Commission as of February 21, 1928, and February 27, 1928, but I am informed that the resolutions show that at the time of the employment or appointment of C. S. Miller, as Referee, and H. M. Paul, as Supervisor of Publication and Printing, these two positions were designated as experts or technical assistants.

The syllabus of Opinion No. 1933 referred to in your communication, rendered to the Chairman of the Industrial Commission, by this department, under date of April 5, 1928, reads:

"The question, whether any particular person hereinafter appointed and employed in the bureau or department of safety and hygiene will be in the unclassified civil service of the state, depends upon whether such person is appointed as superintendent of said bureau or department or is an expert or technical assistant within the meaning of said terms as used in Section 1465-89a, General Code, and is so designated at the time of his employment. Any person hereafter employed in said category of positions, and so designated, will be in the unclassified service. Any person hereafter employed in said bureau or department in a position other than that of superintendent, expert or technical assistant, will be in the competitive classified civil service of the state unless such person is placed in the unclassified civil service by action of the Industrial Commission of Ohio as one of its quota of exemptions allowed it under the provisions of Subsection 8 of Section 486-8 of the General Code."

The pertinent part of Section 1465-89a, General Code, to which you refer, reads:

"The superintendent of the bureau for the prevention of industrial accidents and diseases shall be a competent person with at least five years experience in industrial accident or disease prevention work. *Such superintendent and experts and technical assistants in such bureau, who are designated as such by the Industrial Commission at the time of their employment, shall be in the unclassified civil service of the state and shall hold office during the pleasure of the commission.*" (Italics the writer's.)

The portion of Section 1465-89a, General Code, above quoted, and particularly the language italicized, clearly authorizes the Industrial Commission to employ persons as experts and technical assistants and to designate them as such at the time of their employment.

Persons employed as experts or technical assistants, and so designated at the time of their employment, are *ipso facto* in the unclassified civil service and hold office at the pleasure of the Commission. The Industrial Commission is, by this statute, made the judge of its own requirements in the matter of experts or technical assistants

and it is not within the province of this department to say, as a matter of law, that positions so designated do or do not fall within those classifications. This is left entirely to the determination of the Industrial Commission, and its discretion in this respect will not be disturbed in the absence of fraud or other gross abuse of discretion.

Answering your question specifically, it is my opinion that inasmuch as the Industrial Commission at the time of employing the persons above mentioned as Referee and Supervisor of Publication and Printing, respectively, designated the same as experts or technical assistants, such designation is final and must be followed by your Commission unless it appears that in making such designation there was gross abuse of discretion or fraud.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2239.

TAX AND TAXATION—PERSONAL PROPERTY—SHARES OF FOREIGN CORPORATIONS, NOT DOING BUSINESS IN OHIO, MAY BE EXEMPTED.

SYLLABUS:

1. *Foreign corporations, which are not doing business in Ohio, but are subject to the payment of a franchise fee by the provisions of Sections 5495, et seq., General Code, may exempt their shares from taxation in Ohio as personal property in accordance with the provisions of Section 5499, General Code, although such corporations need not comply with the provisions of Sections 178 and 183, General Code.*

2. *The provisions of Section 5499, General Code, which was enacted later than Section 192, General Code, are now controlling and a foreign corporation seeking to exempt its shares from taxation in Ohio must pay a franchise fee computed upon the entire value of its issued and outstanding stock.*

COLUMBUS, OHIO, June 18, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your communication reading as follows:

“Your attention is directed to Section 192 of the General Code as amended in 111 O. L. 35 and to Section 7 of the act passed April 20, 1927, 112 O. L. 410 (G. C. 5499). As you know, Section 192 has reference to the exemption from taxation of shares of a foreign corporation electing, etc., under the section. However, Section 7 of the act of 1927 now apparently controls.

Under this section it seems that such a corporation must pay a franchise fee computed on the entire issued and outstanding shares which is somewhat different from the provisions of Section 192, either originally or as amended, and also different from Code Section 5372, which last section is one of long standing, it previously being found both in Section 59 of the act of 1859 and Section 13 of the act of 1878.

Your opinion is requested as to whether or not it is possible for a corporation to elect to exempt its shares without previously thereto quali-