

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:

“ ‘A,’ the issuer, sells \$1,000,000 face value of its securities to ‘B,’ a large banking institution, who are not licensed dealers in this state, at 93% of face value. ‘B’ disposes of a large block to ‘C,’ licensed dealer in this state, at 95% face value, to be disposed of to investors in Ohio at face value or 100%. May ‘C,’ the licensed dealer, qualify these securities so purchased from ‘B,’ who is not a licensed dealer or the issuer, by exemption under section 6373-14?”

Section 6373-14 of the General Code, cited by you, requires certain information to be filed with the commissioner of securities in addition to that required by section 6373-9. It is evident from a comparison of the provisions of these two sections that section 6373-9 is intended to be of general application and applies to the sale of all types of securities, regardless of whether the securities are being issued by the original issuer or sold subsequent to the original issue.

Section 6373-14 requires the filing of certain additional information before any issuer or underwriter, or any person or company on behalf of such issuer or underwriter, shall dispose or attempt to dispose of any securities “for the purpose of organizing or promoting any company, or assisting in the flotation of the securities of any company after organization.” The information called for by section 6373-14 is such as pertains particularly to the case of the original issue of securities. The section requires certified copies of the articles of incorporation, copies of the minutes of the stockholders and directors relative to the issue of the securities, sworn statement of items of cash, property, services, patents, good will, etc., received in consideration of the issuance of the securities, copies of contracts or agreements between the issuer and the underwriter.

Section 6373-14 contains certain exceptions. The purpose of the section itself is to prohibit the disposal or attempt to dispose of securities which are issued for the purpose of organizing or promoting any company, or assisting in the flotation of the securities after organization. The effect of the exceptions is not to exempt any issue of securities or any sale of any such securities from the provisions of the securities law in general, but merely to dispense with the requirement that this information be filed and the certificate obtained in those cases to which the section itself is applicable. The certificate provided for is merely a prerequisite to the right to perform a specified act, viz., the sale or attempt to sell securities for the purpose set out in the act. But for this section the issuer, having complied with other sections of the securities act, could dispose of these securities without having furnished the information required by this section.

In the case submitted by you the original issuer must qualify the stock generally under the securities act and must furnish the information required unless the conditions set out in the exceptions are complied with. When the title has once passed from the issuer or underwriter to a purchaser, the subsequent sale of the stock is controlled by the general provisions of the securities act and not by the provisions of section 6373-14.

Your second question quotes section 6373-3 as follows:

“Every such applicant shall execute and file a bond to the state of Ohio in such sum in no case to be less than ten thousand dollars and with such surety as the commissioner requires, and shall also execute and file a bond to the state of Ohio in such sum as the commissioner may require, but not to exceed twenty-five hundred dollars with such surety as the commissioner requires, for each agent named in such application or in any supplemental application made thereto. Such bonds shall be filed with the commissioner of securities and kept by him in his office. Such bonds shall be filed with

the commissioner of securities and kept by him in his office. Such bonds shall be conditioned upon the faithful observance of all of the provisions of this act, and shall also indemnify any purchaser of securities from such dealer or agent who suffers a loss by reason of misrepresentations in the sale of such security by such dealer or agent. Any purchaser claiming to have been damaged by misrepresentation in the sale of any security by such dealer or agent may maintain an action at law against the dealer or agent making such misrepresentations; or both the dealer and agent where the agent makes such misrepresentations; and may join as parties defendant the sureties on the bonds herein provided for. * * *

You then inquire whether the agent of the licensed dealer or the licensed dealer himself should be required to sign as principal the bond required by this section.

The language of this section is specific and there is no room for construction. "Every such applicant shall execute and file a bond * * * and shall also execute and file a bond to the state of Ohio * * * for each agent named in such application." Therefore, the licensed dealer must be the principal on the bond. There is nothing, however, to prevent the requirement that the agent be also a principal on the bond.

Respectfully,
C. C. CRABBE,
Attorney General.

3591.

APPROVAL, ARTICLES OF INCORPORATION OF "THE COLOSSAL INSURANCE UNION," OF DAYTON, OHIO.

COLUMBUS, OHIO, August 26, 1926.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

3592.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENT IN COLUMBIANA COUNTY.

COLUMBUS, OHIO, August 26, 1926.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.