

ticular act do not provide a sufficient reason for the violation of a plain and specific provision of the statute.

It is therefore my opinion that the Division of Labor Statistics of the Department of Industrial Relations may not employ some of the statistical clerks of the Bureau of Business Research of the Ohio State University, at a nominal salary, for the purpose of developing in tabular form information desired by said Bureau of Business Research in carrying out its functions of assisting the Division of Labor Statistics of the Department of Industrial Relations.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2490.

APPROVAL, CONDITIONALLY—DEED EXECUTED BY ALFRED BAKER,
ET AL., TO THE DAYTON AND NORTHERN TRACTION COMPANY.

COLUMBUS, OHIO, April 11, 1934.

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

DEAR SIR:—You have requested my opinion as to the status of the title to a strip of land described in a deed executed by Alfred Baker, et al., granting said premises to the Dayton and Northern Traction Company under date of January 8, 1901, which said deed is of record in the Record of Deeds, Vol. 127, pages 287 and 288, of Darke County, Ohio.

You submitted a copy of said deed and it appears that the said grantee above named obtained title free and clear of all encumbrances, and there are no restrictions or reservations in said instrument. It follows, therefore, that if the grantors had good title, and no opinion is expressed upon this subject for the reason that there is no abstract submitted, then the Dayton and Northern Traction Company owns the fee and would have power to convey the same.

It may be noted, however, that in the deed one of the grantors is W. S. Baker, and it does not appear whether he was married or single and, of course, if married, his wife, if living, would have a dower in the premises. This defect could be cleared up by a proper affidavit by someone who is familiar with the facts.

It further appears that the Dayton and Northern Traction Company under date of June 19, 1906, conveyed said premises to the Indiana, Columbus and Eastern Traction Company, and that in said conveyance no reservations or restrictions were made, and said grantee would obtain the fee under said conveyance.

However, said deed does state that said conveyance is subject to the lien of a certain mortgage given by the Dayton and Northern Traction Company to the Central Trust Company of New York, trustee, dated March 1, 1901, securing an issue of bonds in the sum of \$450,000.00. Undoubtedly this lien has been released in the proceedings in the federal court wherein the receiver of the Indiana, Columbus and Eastern Traction Company was authorized to sell the property in question. However, such release does not appear from any papers

that have been submitted and, of course, before any title could be taken by the state, it would be necessary that this matter be cleared up.

It further appears that under date of October 8, 1928, J. Harvey McClure, receiver of the Indiana, Columbus and Eastern Traction Company, conveyed said premises to F. Dell Sullivan without reservation. While the deed has not been placed upon record, if no other matters of record have intervened since the date of its execution, it would appear that the said grantee now has the legal title to said premises, subject to the possibilities hereinbefore pointed out.

You have further submitted a proposed deed whereby the said F. Dell Sullivan is to quit claim his title to said premises to the State. Without discussing the legality of said instrument, it is suggested that in the event you decide to purchase said premises for highway purposes from Mr. Sullivan, it would be advisable to have him and his wife execute a regular form of easement for highway purposes or a warranty deed conveying the property to the State for highway purposes.

As hereinbefore stated in this opinion, consideration is only being given to the particular instruments submitted. As to the question of taxes that should exist against the property, there is no information at this time before me.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2491.

JUDGMENT—RENDERED ON RECOGNIZANCE BOND—PROSECUTING ATTORNEY OR COUNTY COMMISSIONERS UNAUTHORIZED TO WAIVE PRIORITY OF LIEN IN FAVOR OF MORTGAGE TO HOME OWNERS' LOAN CORPORATION.

SYLLABUS:

1. *When a judgment on a recognizance bond running to the state of Ohio as obligee, has been rendered, the prosecuting attorney has no authority to waive the priority of the lien of such judgment in favor of a subsequent mortgage the proceeds of which are being used to satisfy a mortgage the lien of which is prior to the lien of the recognizance.*

2. *When a judgment on a recognizance bond running to the state of Ohio as obligee, has been rendered, the county commissioners have no authority to waive the priority of the lien of such judgment in favor of a subsequent mortgage the proceeds of which are being used to satisfy a mortgage the lien of which is prior to the lien of the recognizance.*

COLUMBUS, OHIO, April 13, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, reading as follows:

“We respectfully request your opinion concerning the legality of a waiver of priority of a judgment obtained by the State of Ohio upon a