

legislature has specifically provided in Section 12708-3, General Code, the manner in which such alcohol shall be labeled. Such section reads:

“Whoever dispenses or sells completely denatured alcohol or wood alcohol in packages containing less than five wine gallons without having affixed thereto a label on which is printed or stenciled in plain, legible, red letters of equal prominence on a white background the words, ‘Completely Denatured Alcohol’ or ‘Wood Alcohol’, as the case may be, and in addition on the same label in red ink, under the skull and crossbones symbol, the word ‘POISON’ together with the following statement: ‘Completely denatured alcohol, or wood alcohol is a violent poison. It cannot be applied externally to human or animal tissue without serious injurious results. It cannot be taken internally without inducing blindness and general physical decay ultimately resulting in death,’ and without having stamped, stenciled or printed upon such label the name and address of the seller, the degree of proof, and the formula number thereof, shall be fined not less than ten dollars nor more than fifty dollars. Neither the word ‘pure’ nor the single word ‘alcohol’ alone shall appear on any label of completely denatured alcohol or wood alcohol.”

Although this enactment, as you have pointed out in your inquiry, was passed at a time when the situation was different than at present, yet it is not within the province of the administrative branch of the state government to repeal or amend legislative enactments; this function is within the sole province of the legislature. If circumstances warrant, it might be advisable to bring the need for amendment of this section to the attention of the next General Assembly, for its consideration, but until this section is amended, I must be of the opinion that under the legislative mandate, as expressed in the provisions of Section 12708-3, of the General Code, completely denatured alcohol must continue to bear the label as required in such statute, even though it does not contain wood alcohol as a denaturant, as it did when the statute was enacted.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4796.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN CITY OF DELAWARE, DELAWARE COUNTY, OHIO.

COLUMBUS, OHIO, December 7, 1932.

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

DEAR SIR:—I acknowledge receipt of a recent communication over the signature of Earl V. Murray, Statistician, submitting for my examination and approval an abstract of title for property purchased by the State for the Department of Highways, situate in the City of Delaware, Delaware County, Ohio, in Range 17, Township 5, Section 4, more particularly described as

Parcel One, that part of Lot No. 15 bounded and described thus: beginning at a stone on a post at the Southwest corner of said Lot 15;

thence N. along the lot line 59.58 poles; thence E. 5.83 poles; thence N. 27.42 poles to the center of Williams Street; thence E. 14.37 poles; thence S. 87.00 poles to a stone on a post on the South line of said Lot; thence W. along said South line 20.20 poles to the place of beginning, containing 9.98 acres of land.

Parcel Two, parts of inlots Nos. 1950, 1951, 1952, 1953, 1954, 1964 and 1965 in J. A. Barnes' Addition to the said City of Delaware and being a strip of land 50 feet in width extending from a point 286.25 feet North of the Southeast corner of said Barnes' Addition and Southwest of the above described tract, and being the corner of farm lots Nos. 12, 13, 14 and 15; thence on a curve of 11 degrees to the right through said inlots crossing East Street and Bank Street to the North line of the right-of-way of the CCC & I Railroad.

The property is reputed to be owned by Truss Core Tire Company, Inc., but the title is subject to the following encumbrances and defects as shown by the abstract which was last certified by E. S. Mendenhall, abstractor, as of November 7, 1932:

1. In the deed from Fred M. Wirthman and wife to the Rainbow Tire & Rubber Company under date of October 24, 1921, and recorded in Deed Book 159, p. 464, covering the second parcel, the following reservation is found:

"Reserving, however, to the grantors the right of ingress and egress to a triangular piece of ground situated adjacent and contiguous to said premises above described on the southeast side thereof and containing about once acre, more or less. It being further understood by the parties hereto that the grantee and its successors and assigns shall, as long as a railroad switch or branch is operated over said .4-acre tract above described, build and maintain a good, sufficient and substantial fence on each side thereof along said boundary lines. That a substantial fence shall be constructed along said premises as aforesaid within 90 days hereafter or within a reasonable time hereafter. It is further understood and agreed herein that the grantee will, within 90 days hereafter, or a reasonable time hereafter, build a fence along the line between the line owned by it and the grantors, it being understood that the grantors will build one-half thereof, or pay for one-half thereof, if they already have not constructed such proportion of such partition fences. It being further agreed and understood that said grantors are to maintain the crossing they may construct for the purposes aforesaid."

2. A mechanic's lien from The Rainbow Tire & Rubber Company to The United Machine & Manufacturing Company, filed May 16, 1924, and recorded in lien records Vol. 4, p. , covering an unpaid account of \$1589.16 for material used in the construction of buildings, etc., on the premises. The abstract does not disclose that any suit or participation in any subsequent foreclosure proceedings was ever filed by The United Machine & Manufacturing Company to foreclose or otherwise establish the validity of said lien.

Section 8321 of the General Code of Ohio prescribes that liens of this character "shall be liens from the date the first labor was performed, or the first machinery, materials or fuel were furnished by the contractor under the original contract, and shall continue for six years after said affidavit is filed in the office of the County Recorder."

In view of the above statutory provision, on the basis of the abstract as presented, I am of the opinion that this lien has no force, and consequently is no longer a lien on the premises referred to.

3. A mortgage by The Rainbow Tire & Rubber Company to Frank P. Milner and Kate E. Allen executed May 8, 1925, filed for record May 9, 1925, and recorded in M. R., Vol. 98, p. 566, which mortgage was given to secure the payment of the mortgagor's five promissory notes of \$10,000 each, due one each year from date, bearing interest at the rate of 8% per annum. This mortgage has been foreclosed by an order of the Common Pleas Court in Delaware County as will hereafter more fully appear.

4. The deed from The Rainbow Tire & Rubber Company to Truss Core Tire & Rubber Company, Inc., filed October 25, 1930, recorded in D. B. 177 at p. 169, omits Lot No. 1951. As a result, the title to that part of Lot No. 1951, which was conveyed by Wirthman to The Republic Tire & Rubber Company, is still vested in the latter Company.

5. On March 28, 1931, Frank P. Milner and Kate E. Allen filed their petition in the Court of Common Pleas of Delaware County, Ohio, said case being No. 10984 on the docket of said court, against the Rainbow Tire & Rubber Company and Truss Core Tire Company, et al., for the purpose of foreclosing their mortgage, last above referred to, and other liens. The petition does not describe the property in the same language as did the mortgage, according to the abstractor's notes; and in the petition, after differently describing the property by metes and bounds, concludes with the statement that the premises contain 10 acres and 157.4 perches of land in the first tract and .4 of an acre, more or less, in the second tract. No explanation of this discrepancy is afforded by the abstract.

The abstract discloses a letter dated April 3, 1931, from the Auditor of State directing the Delaware County Treasurer to institute foreclosure proceedings under the provisions of sec. 5718 of the General Code of Ohio, on the premises described as: R 19, T 5, S 4, Lot No. 15, 10 A., with Delaware County Auditor's certificate of unredeemed delinquent tract of land which was filed March 28, 1931.

On April 27, 1931, Harry Beiber, as Treasurer of Delaware County, filed his answer and cross petition in said case setting out the tax liens against said premises (the amount is not shown by the abstract), and sets out his authority to foreclose said premises; and prays that his lien be declared the first and best lien on said premises and that they be ordered sold by the Sheriff of Delaware County in the manner provided by law, and the proceeds be applied to the payment of taxes and assessments.

A journal entry filed July 17, 1931, recites that the cause came on for hearing * * * and found that the County Treasurer had been made a party defendant, that taxes due amounted to \$9796.36, that the plaintiff and co-defendants of said Treasurer are in default and confess the allegations of the Treasurer to be true, and the Court then entered judgment for the Treasurer for said amount and costs. The decree also gave judgment in favor of the plaintiffs for the amount due on the mortgage, ordered foreclosure and a sale of the premises. The property was offered twice for sale, one time there being no bidders and the next time the sale for \$16,000 was set aside on motion of the County Treasurer. It was again appraised and offered for sale, but no bids were received.

The Court on August 19, 1932, again having considered the case, gave judgment to the County Treasurer for taxes and costs holding that the valid amount of taxes against the premises including assessments, penalties amounted to \$9797.36. In the same entry the Court ordered the property sold without appraisal.

Pursuant to that order of sale, the Sheriff offered the following real estate

in the City of Delaware, and in the southwest part of Lot No. 15 in Section 4, T 5, R 19, described as follows:

Beginning at a stone on a post formerly set at the southwest corner of said Lot No. 15; thence north $3\frac{1}{2}$ degrees East along the line between lots 12 and 15 of said Section; 87 poles to the center of William Street in the City of Delaware, Ohio, passing over a stone on a post and brickbats on said line $42\frac{1}{2}$ links from said last mentioned corner, said monument was established on the spot where the old post was found; thence along the center of said William Street south 86 degrees 3' East 20.21 poles; thence south $3\frac{1}{2}$ degrees West 87 poles to a stone on a post on the south line of said lot 15, passing over a stone on a post and brickbats $42\frac{1}{2}$ links from the corner in the center of William Street; thence north 86 degrees 3' West along the south line of said Lot No. 15; 20.21 poles to the place of beginning, containing 10 acres and $157\text{-}4/40$ perches of land, being the part of the Edward Potter Estate set off and assigned to said Mary E. Utter in partition at the September Term, 1886 of the Court of Common Pleas, Delaware County, Ohio, See Chancery Records Vol. 28, page 269 to 277 inclusive for proceeding and Plat.

Situated in the City of Delaware, County of Delaware and State of Ohio beginning at a point in the west line of a 10-acre tract sold to the Rainbow Tire & Rubber Company, by grantors herein, 286.25 feet, north of the southwest corner of said tract of land, and thence following a line parallel 2 and 25 ft. distant therefrom at a right angle, the center line of siding (from the N. Y. Cen. R. R. to the Rainbow Tire & Rubber Company property), to a point where said line will intersect the northerly line of Bank Street; thence with the line of said street southeasterly to a point where it will intersect a line 25 feet distant from said center line to the west line at the first mentioned 10-acre tract; thence with the line of said ten acre tract northerly to the place of beginning containing $4/10$ of an acre, more or less.

The property offered by the Sheriff is the property which his return shows was sold on September 17, 1932, to the State of Ohio for the sum of \$10,000.

The abstract of title does not show that the sale has been confirmed. Even a casual reading of the Sheriff's description will disclose that it is not the same as the description contained in the abstracter's caption and to which my investigation must necessarily be limited. It is possible that the property which the Sheriff has offered is contained within the bounds of the property shown in the abstracter's caption and later conveyed by Wirthman to the Republic Tire & Rubber Company, yet only a surveyor would be competent to certify to that fact. I, therefore, suggest that a survey be made to definitely determine that matter. Other defects in the proceedings, as disclosed by the abstract, are as follows:

(a) Neither the Auditor's certificate nor the cross petition of the County Treasurer discloses the amount of money appearing to be due and unpaid and a lien against the property described, nor the years for which the taxes, penalties and interest were levied and assessed. This should have been shown in the certificate and cross petition, or the abstract corrected to show it, because only the taxes which were included in the delinquent land tax certificates are abated and the taxes and assessments accruing subsequent to the delivery of said certificate are not abated but remain a lien upon the land, unless the same are paid from the proceeds of the sale. This is especially pertinent because the abstracter, at

page 1 of his last continuation under date of November 7, 1932, certifies that the total amount of taxes, special assessments, penalties and interest for the whole year 1931 and previously, amount to \$10,497.90.

(b) The State Auditor's certificate, according to the abstract, only covered the 10 acres in Lot No. 15. The County Treasurer is necessarily limited in asserting his claim by proceeding only against the property enumerated in the State Auditor's certificate. The decree of the Court for the sale of the premises was upon the cross petition of the County Treasurer, without appraisal under favor of Sec. 5719 of the General Code. The Court, therefore, was not authorized to make any order on the Treasurer's cross petition for the sale of the premises consisting of parts of inlots Nos. 1950, 1951, 1952, 1953, 1954, 1964 and 1965.

(c) While the mortgage by the Republic Tire & Rubber Company to Milner and Allen covers all the premises contained in the caption of the abstract for the entire quantity of which the mortgagees ask foreclosure and sale, nevertheless, the decree was taken upon the cross petition of the County Treasurer for moneys due from the title owner, Truss Core Tire Company, which did not have legal title to any part of inlot No. 1951. Seemingly, therefore, the order of the Court in respect of the sale of the part of inlot No. 1951 was again defective and as a result, the Sheriff will have no right to convey that part of said inlot.

6. The unpaid taxes, special assessments, penalties and interest as shown by the abstract certified under date of November 7, 1932, amount to \$10,497.90. No explanation of the discrepancy between that amount and the amount found by the Court to be due has been furnished by the abstracter. This excess should be explained because the amount accruing since the delinquency certified to the Auditor of State cannot be made the subject of the County Treasurer's cross petition to foreclose delinquent tax liens; and of necessity the amount accruing since the certificate to the Auditor of State will still be a lien on said land. There are sixteen semi-annual payments of \$14.20 each to be paid after this year for the East Williams Street sidewalk in front of said premises. There is also a charge of \$7.72 for sewer treatment which appears to be a perpetual charge. There has been certified to the Recorder of Delaware County an excise and franchise tax, as delinquent, in the sum of \$230.24.

It is possible that the abstracter has improperly abstracted the lien and proceedings above noted. I suggest that the abstract be returned to him for further consideration.

Unless the title can be cleared to cover the defects above noted, it is my opinion that the Sheriff cannot convey good title to the State of Ohio, free and clear, as a result of the sale which was held on September 17, 1932, at which time the State of Ohio was declared to be the highest and best bidder in the sum of \$10,000.00.

Respectfully,

GILBERT BETTMAN,
Attorney General.