

speedily as possible, and, if necessary, extra ballots may be printed for this purpose. Extra ballots so printed shall conform as nearly as possible to the original ballots and the printing and care of them shall be under the same provisions and penalties as the printing and care of other ballots. If neither the official ballots nor extra ballots so prepared are ready for distribution at any polling place, or if the supply of ballots is exhausted before the polls are closed, unofficial ballots may be used, so that no elector for lack of a ballot shall be deprived of his franchise."

The purpose of a popular election is to ascertain the will of the electors as to a given proposition submitted to them, or as to who shall serve them as officers. It is to obtain a fair and honest expression of the will of the electors. Where a substantial right is violated, there is not such a fair and honest expression of the will of the electors. In view of the fact that the one candidate had received only six votes for mayor more than his competitor, and that there were forty-two qualified electors within the polling place who had been waiting in line for more than an hour seeking a change to vote prior to 6:30 Eastern Standard time, it is my opinion that substantial rights were violated. It is true there is no showing as to how the forty-two voters would have voted. They might have all voted in favor of the one who had the majority of six votes on the face of the returns. They might have all voted in opposition to said candidate. But the fact remains that they were deprived of an opportunity to cast their vote. It is to be presumed that the votes of these forty-two qualified electors would be as expressive of the will of the electors as those that were cast before.

It is therefore my opinion that all qualified electors who were within the polling place at the time of closing the polls, even though they may not have had the ballots in their hands when the polls were declared closed, were entitled to receive and cast their ballots at the election.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1349.

MAGISTRATE—SECURITY FOR PAYMENT OF COSTS—MAY TAKE
CHATTELS—EXECUTION AFTER FAILURE OF SECURITY.

SYLLABUS:

1. *Magistrate is authorized to take either chattels or choses in action, including a mortgage, as security for the payment of a fine and costs. In case of default of payment of fine, mayor has right to sell chattels and foreclose mortgage.*

2. *Where security for fine and costs fails, execution may be levied upon the property of the defendant, or, in default thereof, upon the body of the defendant.*

COLUMBUS, OHIO, December 12, 1927.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of your letter which reads in part as follows:

"First: In 1923 the Mayor of the Village of Waverly, Pike County Ohio, upon a plea of 'Guilty,' imposed a fine of five hundred (\$500.00) dollars.

upon a person for the unlawful possession of intoxicating liquors, whereupon he paid two hundred (\$200.00) dollars, of said fine, and to secure the balance he deposited with the Mayor as collateral a 'Certificate of Stock,' with par value of five hundred (\$500.00) dollars; he also took a mortgage on defendant's real estate for the sum of two hundred (\$200.00) dollars, in the name of the Mayor of said Village.

The defendant has made a demand on the present Mayor for the surrender of the 'Stock Certificate,' and for cancellation of the mortgage.

Please advise what action the Mayor should take in the matter.

* * * * *

Section 13717 General Code, provides as follows :

"When a fine is the whole or a part of a sentence, the court or magistrate may order that the person sentenced remain imprisoned in jail until such fine and costs are paid, or secured to be paid, or he is otherwise legally discharged, provided that the person so imprisoned shall receive credit upon such fine and costs at the rate of one dollar and a half per day for each day's imprisonment."

Section 13718, General Code, provides as follows :

"When a magistrate or court renders judgment for a fine, an execution may issue for such judgment and the costs of prosecution, to be levied on the property, or, in default thereof, upon the body of the defendant. The officer holding such writ may arrest such defendant in any county and commit him to the jail of the county in which such writ issued, until such fine and costs are paid, or secured to be paid, or he is otherwise legally discharged."

While it was held by one of my predecessors in Opinions of the Attorney General for 1924, at page 374, that "Section 13717, General Code, does permit a court to accept chattels as security for a fine in a criminal case," I do not agree with that interpretation of the law.

I am of the opinion that a magistrate may take either chattels or choses in action as security for the payment of a fine. There is nothing in either of the above sections which limits the words "secured to be paid" to a bond.

I am of the opinion that the mayor should refuse to surrender the stock certificate or to cancel the mortgage.

I am of the further opinion that if the fine be not paid according to the terms of either the mortgage or the deposit of the collateral security, the mayor has the right to advertise and sell the collateral security and to proceed to foreclose the mortgage upon condition being broken.

It still remains the duty of the mayor to collect the fine and if for any reason the mayor is unable to satisfy the fine and costs out of the security now in his hands he should cause an execution to be issued in accordance with law upon the property of the defendant, or, in default thereof, upon the body of the defendant. (See Section 13718, supra.)

Respectfully,
EDWARD C. TURNER,
Attorney General.