

ion may be made in the discharge of an administrative duty rather than in his strictly judicial capacity.

Respectfully,
EDWARD C. TURNER,
Attorney General.

398.

DISAPPROVAL, BONDS OF CITY OF EAST LIVERPOOL, COLUMBIANA COUNTY, OHIO—\$9,540.00.

COLUMBUS, OHIO, April 27, 1927.

Re: Bonds of city of East Liverpool, Columbiana county, \$9,540.00.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

GENTLEMEN:—Upon examination of the transcript for the above bond issue I note that there is supplied the affidavit of the publisher showing publication of the notice of the bond sale for four consecutive weeks commencing on February 25, 1927. The bond sale occurred on March 22, 1927. The last publication accordingly occurred on March 18th, hence a full week did not elapse between the date of the last publication and the day of sale.

In construing a similar section requiring the publication of notice the Supreme Court in the case of State of Ohio vs. Kuhner and King, 107 O. S. 406, held that the statutory provision requiring publication for a given number of weeks means that a full week must expire after the date of the last publication and before the happening of the event advertised.

In this case only four days elapsed and the notice was therefore ineffective. Section 3924, General Code, requires four weeks publication in two newspapers printed and of general circulation in the county. The one publication in this case having been insufficient it is unnecessary to consider whether or not there was publication in a second newspaper for the proper time. The transcript, however, shows only the publication in one newspaper.

For the reason that I have above indicated, there was no valid sale of these bonds and the issue must therefore be disapproved.

Respectfully,
EDWARD C. TURNER,
Attorney General.

399.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN HANOVER TOWNSHIP, COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, April 27, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I have examined the encumbrance estimate and abstract of title purporting to cover Tract No. 15, Guilford Lake Park, consisting of 77.71 acres, more or less, standing in the name of E. C. Charlton.

The abstract as submitted was prepared by McMillan & Kelso, abstracters, Lisbon, Ohio, under date of May 10, 1926, and continued by said abstracters to November 3, 1926.

The abstract as submitted pertains to the following premises situated in the northwest quarter of section 12, township 15, range 4, Columbiana county, Ohio, and is more particularly described as follows:

"Situated in the county of Columbiana and state of Ohio, and known as the Northwest quarter of section 12, in township 15, range 4, in the District of Lands subject to sale at Steubenville, Ohio, containing 160½ acres of land, be the same more or less, excepting therefrom property sold to Joseph M. Gruber, by deed dated Dec. 24, 1925, recorded Dec. 24, 1925 in Vol. 492, page 579, Columbiana county records."

The examination of the abstract reveals the following:

1. The abstract contains no record of any government patent, although attached thereto is a certificate of the auditor of state showing that the whole of section 12, town 15, range 4, Columbiana county, Ohio, containing 640 acres, was patented to John Fugate on May 19, 1802.

2. The chain of title up to the time of the foreclosure case of James Kelly vs. The Sandy and Beaver Canal Company, et al., filed January 28, 1853, can be traced with a fair degree of accuracy. There is nothing in the abstract to show that the Canal Company ever acquired title to any of the real estate except that the deed from Thomas Charlton and wife to Henry McCan dated October 21, 1850, refers to an article with the Sand and Beaver Canal Company wherein is described so much of the quarter section as is covered by the reservoir of the Sandy and Beaver Canal. The record of the foreclosure case above referred to is so incomplete that it is impossible to pass upon the same. The abstract shows that during the August Term, 1854, parcel No. 41 was ordered sold to Thomas Charlton (Item 22, p. 24). In a note the abstracter says: "The records in this case are so incomplete, so erroneous and descriptions so uncertain that I am unable to locate just where it belongs." At Item 24, page 27, appears a deed from John Clark, Master Commissioner to Thomas Charlton dated June 18, 1855, for 67.58 acres, more or less, which seems to be included in the tract which the state proposes to purchase. The chain of title to the 67.58 acres above referred to should, if possible, be more fully abstracted.

3. Thomas Charlton's will was probated on January 4, 1864 (Item 25, p. 29). Said will devised testator's farm to his wife for life and directed that after her death or re-marriage all of his real estate and personal property be sold by his executors at public sale and that the proceeds, after the payment of a certain legacy, be divided into eight shares and distributed to eight children of the testator named in said will. However, the property was not sold by the executor. On the contrary, the abstract shows a series of quit claim deeds, beginning with Item 29, on page 33, and extending to Item 36, page 40, both inclusive. Apparently the object and purpose of these deeds is to convey the interests of the various children of Thomas Charlton to Michael Charlton. The names of some of the grantors in the deeds above referred to do not correspond to the names mentioned in Thomas Charlton's will, either as his children or the beneficiaries of the proceeds of the sale of his real estate by his executors. It is probable that one or more of Thomas Charlton's children were deceased at the time these deeds were executed and that some of the grantors named therein are heirs at law of such deceased children. However, there is nothing in the abstract to show this to be the fact and, if possible, evidence should be obtained to show the interests of the various grantors in the property conveyed.

4. The mortgage from M. Charlton to Amos B. Charlton, in the sum of \$3,000, dated March 21, 1892 (Item 37, p. 41), is not canceled of record.

5. Item 28, p. 42, shows a "Trust Deed" dated March 31, 1892, from M. Charlton to J. C. F. Hull, as trustee, in trust for all the creditors of the said Michael Charlton. Item 39, p. 43, shows a deed from J. C. F. Hull, as assignee in trust for the benefit of the creditors of Michael Charlton, to Elvina Charlton, dated December 10, 1892. This deed refers to certain court proceedings in connection with the assignment. These proceedings should appear in the abstract.

6. The mortgage from E. C. Charlton and wife to the First National Bank (Salem, Ohio,) dated July 5, 1923, in the sum of \$3,000 (Item 42, p. 47), is not canceled of record.

7. The mortgage from E. C. Charlton and wife to David Sanor, dated March 12, 19—, in the sum of \$1,100.00 (Item 43, p. 48), is not canceled of record.

8. The mortgage from E. C. Charlton and wife to Joseph M. Gruber, dated December 19, 1925, in the sum of \$770.00 (Item 44, p. 49), is not canceled of record.

9. At Item 45, p. 50, of the abstract appears an oil and gas lease from Elvina Charlton to Fred W. Worthington, dated January 4, 1910. If this lease has expired or has been released that fact should be shown in the abstract.

10. At Item 47, p. 52, of the abstract appears a deed from Thomas Charlton and wife to Joseph Rakestraw and David Galbreath. It appears that this deed was made to the grantees as school directors and to their successors so long as the inhabitants of School District No. 1 shall use it for school purposes, and provided for a reversion to Thomas Charlton, his heirs or assigns in the event such use was discontinued. The deed covers one-half acre in the northwest corner of section 12 and appears to be within the limits of the tract which the state proposes to purchase. Evidence should be obtained to show its abandonment for school purposes.

11. At Item 48, p. 53, of the abstract appears a deed from E. C. Charlton and wife to Joseph M. Gruber, dated December 24, 1925, describing a small tract of land, which description is "subject to any changes hereafter made by the state of Ohio in their survey, but the amount of land conveyed to remain the same." Another deed should be executed showing an accurate description of the real estate conveyed so that no part of the same will fall within the limits of the real estate which the state proposes to purchase.

12. At Item 51, p. 54, of the abstract, I note an action filed by John Bova vs. E. C. Charlton, asking judgment in the sum of \$375.00. As a judgment obtained in the above action may be or may become a lien upon the tract of land which the state proposes to purchase, the action should be further abstracted and the lien of the judgment, if any there be, should be discharged as to the tract to be conveyed to the state.

13. The taxes for 1926 are not shown by the abstract to have been paid, and if unpaid are a lien. The abstract shows that there has been no examination made in the United States courts, and that examination was made in the name of record owners only and only for the period during which each one respectively held title.

No deed was submitted with the abstract and other papers except a blank form of Ohio warranty deed containing a description of the property which it is proposed to convey to the state. Since this deed has not been prepared and executed, this department is unable to pass upon the same.

The encumbrance estimate submitted with the above abstract bears No. 3985, is dated December 22, 1926, bears the certificate of the Director of Finance under date of December 23, 1926, and appears to be in regular form.

I am returning herewith your file pertaining to Tract No. 15, including the abstract of title, the warranty deed, encumbrance estimate and other papers.

Respectfully,

EDWARD C. TURNER,
Attorney General.