

3975.

CLERK OF COURTS—AFFIDAVIT SHOWING BILL OF SALE OR SWORN STATEMENT OF OWNERSHIP LOST REQUIRED BEFORE CLERK OF COURTS NEED FURNISH CERTIFIED COPIES THEREOF—FEE FOR CERTIFIED COPY.

SYLLABUS:

1. *Section 6310-13a, General Code, does not authorize the clerk of courts or his deputy to furnish certified copies of a lost, stolen or destroyed bill of sale or sworn statement of ownership, without requiring the filing of an affidavit showing that such bill of sale or sworn statement of ownership has been lost, stolen or destroyed.*

2. *If the affidavit required by virtue of section 6310-13a, General Code, is taken by the clerk of courts or his deputy, a fee of twenty-five cents is required for the taking of the affidavit in addition to the twenty-five cent fee for the furnishing of a certified copy of such lost, stolen or destroyed bill of sale or sworn statement of ownership.*

COLUMBUS, OHIO, February 25, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 6310-13a of the General Code provides a certified copy of a bill of sale or certificate of ownership may be procured from the Clerk of Courts upon presentation of an affidavit showing that such bill of sale or sworn statement of ownership has been lost, stolen or destroyed, on the payment of a fee of twenty-five cents.

QUESTION 1. Has the Clerk of Courts a right to furnish certified copies of a sworn statement of ownership or a bill of sale without requiring the filing of the affidavit referred to in this section?

QUESTION 2. If the affidavit in question is executed by the Clerk of Courts or his deputy, is he required to charge the fee of twenty-five cents for taking the affidavit, in addition to the twenty-five cents for making the certified copy?”

Section 6310-13a, General Code, in so far as pertinent to your inquiry, provides as follows:

“In case of copy of the bill of sale or sworn statement which has been filed according to the provisions of this chapter shall be lost, stolen or destroyed, a certified copy thereof may be procured from the clerk of courts *upon presentation of an affidavit* showing that such bill of sale or sworn statement of ownership has been lost, stolen or destroyed *and on the payment of a fee of twenty-five cents.* * * *”

In answer to your first question, it is apparent from a mere reading of the statute

that the clerk of courts would have no authority to issue a certified copy of a bill of sale or sworn statement of ownership which had been lost, destroyed or stolen, except upon presentation of an affidavit to that effect since such affidavit is made a condition precedent to such action on the part of the clerk.

Relative to your second question, a reading of the excerpt from section 6310-13a, supra, discloses no duty upon the clerk of courts or his deputy to take the affidavit as well as to furnish a certified copy of a lost, stolen or destroyed bill of sale or sworn statement of ownership for the single fee of twenty-five cents. On the other hand, it provides for a fee of twenty-five cents to be charged solely for the furnishing of such certified copy upon the presentation of the affidavit. Of course if the applicant desires the affidavit to be taken by the clerk of courts or his deputy, the clerk or deputy may do so, but should charge a separate fee for the taking of such affidavit as provided by section 2900, General Code, infra.

Pertinent to your second question is section 2873, General Code, which provides:

“The clerk may administer oaths and *take* and certify *affidavits*, depositions and acknowledgments of deeds, mortgages, powers of attorney and other instruments of writing.”

Section 2871, General Code, provides that the clerk may appoint one or more deputies.

Section 9, General Code, provides in part:

“A deputy, when duly qualified, may perform all and singular the duties of his principal. * * *”

Section 2900, General Code, relative to fees to be charged by the clerk of courts, provides in part:

“For the services hereinafter specified, when rendered, the clerk shall charge and collect the fees provided in this and the next following section and no more; * * * for taking each affidavit, including certificate and seal, twenty-five cents. * * *”

Section 2977, General Code, provides inter alia:

“All the fees * * * allowances and other perquisites collected or received by law as compensation for services by a * * * clerk of courts, * * * shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided.”

It was held in an opinion of my predecessor, to be found in the Opinions for 1927, Volume 1, page 45, as disclosed by the syllabus:

“When a clerk of the common pleas court, or his deputy, administers an oath on an affidavit of verification to a pleading filed in his office, *or any other affidavit*, or performance of any other service authorized by section 2873, General Code, he must charge therefore the fee provided by law and pay the same into the county treasury.”

It was noted in this opinion that an examination of different statutes disclosed that the powers given to the clerk of courts and his deputy in section 2873, General Code, referred to supra, were powers which could be exercised by a notary public, but that when they were exercised by the clerk of courts or his deputy, the fees should not be retained by such officials but should be paid into the county treasury. (See page 45, printed volume referred to supra.)

Specifically answering your questions, it is my opinion that:

1. Section 6310-13a, General Code, does not authorize the clerk of courts or his deputy to furnish certified copies of a lost, stolen or destroyed bill of sale or sworn statement of ownership, without requiring the filing of an affidavit showing that such bill of sale or sworn statement of ownership has been lost, stolen or destroyed.

2. If the affidavit required by virtue of section 6310-13a, General Code, is taken by the clerk of courts or his deputy, a fee of twenty-five cents is required for the taking of the affidavit in addition to the twenty-five cent fee for the furnishing of a certified copy of such lost, stolen or destroyed bill of sale or sworn statement of ownership.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3976.

CORPORATION—COMMUNICATION TO TAX COMMISSION IS LETTER UNDER POSTAL LAWS WHEN—TRANSMITTED BY EXPRESS UNLAWFUL WHEN.

SYLLABUS:

1. *A communication from a corporation to the Tax Commission of Ohio, containing information with reference to stockholders in such corporation, is a letter within the meaning of the Postal laws of the United States.*

2. *The transmitting of such communication by express is a violation of the United States Statutes which make it a criminal offense to convey letters or packets out of the mail.*

3. *When instructions are given to transmit such information by express and such instructions are complied with, the giving thereof constitutes a violation of the aforesaid statutes.*

COLUMBUS, OHIO, February 25, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“We enclose herewith our tax form No. 939, and call your attention specifically to the instructions printed thereon as follows:

“To be transmitted to the Tax Commission of Ohio, Columbus, Ohio, Postage or Express Prepaid.”

We also enclose a circular issued by the United States Post Office, which has a direct bearing on the question to be determined.