

1954.

APPROVAL, ABSTRACT OF TITLE TO LAND OF LOUISE DOHRMAN, IN
NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, April 11, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—Under date of March 27, 1928, you submitted for my opinion abstracts of title and a deed from Louise Dohrman to the State of Ohio for certain lands situated in Nile Township, Scioto County, Ohio, and more particularly described as follows:

“Beginning at a point in the north line of said Survey No. 15833 and the northwest corner 200 acre tract part of same survey conveyed by deed from Henry Fisher and wife to Lake F. Jones; thence south along and with the west line of said Jones tract to a point in the north line of a 365 acre tract of same Survey conveyed by Henry Fisher and wife to J. L. Bachman by deed; thence west along and with the said north line of Bachman tract to a point in the northeast corner of a 500 acre tract sold off the west side of said Survey No. 15833 and the southeast corner of a 100 acre tract of said Survey conveyed by J. J. Rardin, Trustee to Thomas S. Collins by deed; thence north with the east line of said 100 acre tract 12½ east 192 poles to a large stone and black oak corner to J. Pyles Survey No. 15458 and in the north line of Survey No. 15833; thence in an easterly direction with the north line of said Survey No. 15833 to the place of beginning; containing 200 acres, more or less, and the east half of tract thereby conveyed, containing 100 acres more or less.”

On an examination made by me of the abstract of title submitted, I am of the opinion that Louise Dohrman has a good and merchantable title to the east half of the 200 acre tract of land above described, which she proposes to transfer to the State of Ohio by the deed above referred to.

The lands here under investigation form a part of Virginia Military Survey, No. 15833, made and entered by John B. Southall and David F. Heaton under date of May 10, 1850, and December 23, 1851.

As is well known the State of Virginia prior to the year 1784 claimed title to all lands lying northwest of the Ohio River by reason of a grant made by King James I of England to the Virginia Company in 1609. The lands of the so-called “Northwest Territory” were ceded by the State of Virginia to the United States in the year 1784 with the condition that that part of said lands lying between the Scioto and Little Miami Rivers was to be held in trust by the United States to satisfy the bounties of the Virginia soldiers who had served in the Revolutionary War “in the Continental line.”

Congress opened these lands for location August 10, 1790, and they were finally closed for location December 31, 1851. During that period any soldier of the Revolutionary War or his heirs or assigns, holding a Virginia Military Land warrant could locate on this land, but such person so locating was required to make a Survey of his Entry and return same to the Land Office at Chillicothe, and then have the same filed in Washington on or before December 31, 1851.

It appears that said John B. Southall and David F. Heaton as assignees of a

Virginia Military Land warrant, entered and caused said Survey No. 15833 to be made. However, it appears that this Survey was not filed within the time limit and for this reason, as well as for the reason that the real quantity of acreage enclosed in said Survey grossly exceeded the quantity of land called for by the warrant and declared by the Survey, said Survey and Entry were probably wholly void. *Coan vs. Flagg*, 38 O. S. 156; *Coan vs. Flagg*, 123 U. S. 117.

Said John B. Southall and David F. Heaton and their successors remained in possession of the lands in said Survey, under color of title, down to the year 1893 when Mr. Isaiah V. Beller became the owner of record of a parcel of land including the lands here under investigation.

In the meantime the said Survey and Entry of Southall and Heaton being void, and no patent having issued on the same, the real title to these lands became vested in the Ohio State University, formerly known as the Ohio Agricultural and Mechanical College or the Ohio State University, obtained title to these lands through an act of Congress under date of February 18, 1871, which ceded the title of the United States to all "the unsold lands" in the Virginia Military District in the State of Ohio, to the State of Ohio, which act of Congress was followed by acts of the Legislature of Ohio, granting and confirming the title of these lands to the Ohio Agricultural and Mechanical College.

The State of Ohio afterward, in order to quiet the title of those who held by possession lands in the Virginia Military District, under color of title, by the act of the Legislature under date of March 14, 1889, known as the "Shinn Bill" authorized and directed the trustees of the Ohio State University to make quit claim deeds to those holding such titles on their applications therefor.

Pursuant to this statutory authority, the Ohio State University by its board of trustees under date of September 29, 1894, executed and delivered to said Isaiah V. Beller a quit claim deed conveying to him all its right, title and interest in said parcel of land of which he was then the owner of record, and which as above noted, included the lands here under investigation.

All subsequent owners and holders of the title to the lands here under investigation, including Louise Dohrman, the present owner, obtained title to said lands through Isaiah V. Beller, as the source of their title.

The typewritten carbon copy of the action of the Controlling Board shows that approval was given for the purchase of one hundred acres, the land here under investigation, from Louise Dohrman for the purchase price therein stated.

The encumbrance estimate which is Number 3385, and bears date of March 22, 1928, covers the payment of the purchase price of these lands to Louise Dohrman out of the Division of Forestry, G-1 Lands account. The encumbrance estimate shows an unappropriated balance in this fund sufficient to cover the purchase price of this property.

The deed submitted covers the east half of the two hundred acre tract above described. The lines for the description are property lines of tracts of land owned by other persons, and require reference to other deeds for certainty of description. This is not a proper method to be used in describing lands on the conveyance thereof by deed, and the deed submitted should be returned to said Louise Dohrman for the purpose of having the land intended to be conveyed to the State of Ohio, described by metes and bounds.

The said deed contains the recital that the premises are free and clear of all encumbrances whatever "except taxes and assessments due in June, 1928, and thereafter, which grantee assumes and agrees to pay as part of the consideration of this transfer."

The abstract does not disclose that there are any assessments levied and unpaid on the property. The taxes for the year 1927, amounting to \$5.32, according to the abstracter, were paid in full in December, 1927. In view of this fact there is no reason why any exceptions whatever should be stated in the clause wherein the grantor covenants that the premises are clear and free from all encumbrances.

Said abstracts of title above noted, deed, encumbrance estimate and other files are herewith returned.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1955.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND SAM McCLEARY, COSHOCTON, OHIO, FOR THE CONSTRUCTION OF FISH HATCHERY AT COSHOCTON, OHIO, AT AN EXPENDITURE OF \$8,374.75—SURETY BOND EXECUTED BY THE AMERICAN GUARANTY COMPANY.

COLUMBUS, OHIO, April 11, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Agriculture—Division of Fish and Game, and Sam McCleary, of Coshocton, Ohio. This contract covers the construction and completion of General Contract for Fish Hatchery, located at Coshocton, Coshocton County, Ohio, and calls for an expenditure of eight thousand three hundred and seventy-four and seventy-five one hundredths dollars (\$8,374.75).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the Secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the moneys appropriated by the 87th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the American Guaranty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you together with all other data submitted in this connection.

Respectfully,

EDWARD C. TURNER,

Attorney General.