

2810.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, June 9, 1934.

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

2811.

APPROVAL, NOTES OF WELLINGTON VILLAGE SCHOOL DISTRICT, LORAIN COUNTY, OHIO—\$7,500.00.

COLUMBUS, OHIO, June 9, 1934.

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

2812.

APPROVAL, NOTES OF WILLOUGHBY RURAL SCHOOL DISTRICT, LAKE COUNTY, OHIO—\$12,000.00.

COLUMBUS, OHIO, June 9, 1934.

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

2813.

CORRECTION OF ERROR IN DEED EXECUTED BY GOVERNOR TO ARTAMISHA R. BREITENSTEIN OF LIBERTY TOWNSHIP, FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, June 11, 1934.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—One Artamisha R. Breitenstein of Liberty Township, Fairfield County, Ohio, acting through her attorney Henry T. Pickering of Lancaster, Ohio, has made an application to this office pursuant to the provisions of section 8528, General Code, for the correction of an error in a deed executed by Governor Robert Lucas under date of April 9, 1835. The deed here referred to was one executed under authority of an act enacted by the legislature of this state under date of January 29, 1827, providing for the sale of section 16 school lands therefore granted by Congress for the use of the common schools of the state, or of other lands allotted in lieu thereof.

From the files submitted to me, it appears that on March 17, 1932, one William Lamb, acting under the authority of the act of the legislature above referred to, purchased of the county auditor of Fairfield County the east half of the southwest quarter of section 15, township 16, range 19, Fairfield County, Ohio, and, as required by said act, paid to the county auditor one-fourth of the appraised value of this eighty-acre tract of land, the appraised value of which was the sum of six hundred and ten dollars (\$610.00). It appears that thereafter the rights and equities of William Lamb in and to this tract of land passed by assignment to one Frederick Soliday, and that thereafter on March 20, 1835, the purchase price of this tract of land having been paid for in full, the county auditor of Fairfield County executed to Frederick Soliday, as assignee of William Lamb, a final certificate showing the payment of such purchase price, and upon which certificate Frederick Soliday, as assignee of William Lamb, was entitled to a deed executed by the Governor of the State conveying to him said tract of land. Sometime thereafter, to-wit, on April 9, 1835, Robert Lucas, the Governor of the State of Ohio, executed and delivered to Frederick Soliday a deed in the form prescribed by law with the intent and purpose of conveying to him said tract of land in the east half of the southwest quarter of section 15, township 16, range 19, Fairfield County, Ohio. By some inadvertence in the preparation of this deed, the property therein and thereby intended to be conveyed was erroneously described as the east half of the southeast quarter of section 15, township 16, range 19, Fairfield County, Ohio.

It further appears that notwithstanding the fact that the property conveyed to him by this deed was described as the east half of the southeast quarter of section 15, township 16 and range 19, Frederick Soliday actually entered into possession of the eighty-acre tract of land which had been purchased by his assignor William Lamb and for which he, as the assignee of William Lamb, held the final certificate of purchase issued to him by the county auditor under the provisions of said act, to-wit, the east half of the southwest quarter of said section, township and range. Thereafter, Frederick Soliday continued to hold and possess this tract of land until May 4, 1857, when he executed and delivered a deed to one Jacob Auer apparently thereby intending to convey to Jacob Auer, his son-in-law, the tract of land theretofore held and possessed by the grantor, which tract of land, as above noted, was the east half of the southwest quarter of section 15, township 16, range 19, Fairfield County, Ohio. However, the same error was made in this deed as was made in the deed executed by Governor Lucas to Frederick Soliday, and the property therein intended to be conveyed was described as the east half of the southeast quarter of said section, township and range.

After the execution of this deed in the year 1857, Jacob Auer continued to hold and possess this tract of land until the time of his death on December 28, 1914. Thereafter, on March 17, 1916, the executor of the estate of Jacob Auer, deceased, acting under a power conferred upon him by the last will and testament of Jacob Auer, executed a deed to Artamisha R. Breitenstein, a daughter of Jacob Auer, thereby intending to convey to her the east half of the east half of the southwest quarter of section 15, township 16, range 19, containing forty acres more or less. This deed followed the error in the former deed and the property therein intended to be conveyed was described as being the east half of the east half of the southeast quarter of said section, township and range.

In the consideration of the question before me, with respect to the existence of an error in the description of the property intended to be conveyed

in and by the deed from Governor Lucas to Frederick Soliday, above noted, it is pertinent to note the proceedings relating to the sale and conveyance of the lands in the southeast quarter of this section, township and range under the act above referred to, relating to the sale and conveyance of school lands. As to this, it appears that on February 23, 1832, one Adam Moyer made separate purchases of the east part and of the west part of said section, township and range, and that thereafter one William B. Wickizer, having succeeded by assignment to the rights and equities of Adam Moyer in and to the southeast quarter of this section of school land, a final certificate was executed by the county auditor to such assignee, and in February, 1836, Governor Lucas executed a deed to William B. Wickizer, assignee of Adam Moyer, for the whole of the southeast quarter of this section. And this quarter section of the several parcels thereof, is now owned and held by various persons who trace their title by mesne conveyances back to William B. Wickizer, the grantee in the Governor's deed above referred to.

By section 8528, General Code, it is provided that when, by satisfactory evidence, it appears to the governor and the attorney general, that an error has occurred in a deed executed and delivered in the name of the state, under the laws thereof, the governor shall correct such error by the execution of a correct and proper title deed, according to the intent and object of the original purchase or conveyance, to the party entitled to it, his heirs, or legal assigns, as the case may require, and take from such party a release in due form, to the state, of the property erroneously conveyed.

Upon the facts above noted and discussed, I am of the opinion that satisfactory evidence has been produced showing that an error occurred in the description of the property intended to be conveyed by Governor Lucas to Frederick Soliday, above referred to, and that a new deed drafted by you, as Auditor of the State, should be executed by the Governor as required by sections 8528 and 8529, General Code, in such case made and provided. In this connection, it is further noted that inasmuch as the deed from Governor Lucas to Frederick Soliday containing the erroneous description of this land was executed, delivered and recorded prior to the execution, delivery and recording of the deed from Governor Lucas to William B. Wickizer in which the property to be conveyed was correctly described as the southeast quarter of section 15 of said township and range, the execution and delivery of the deed by Governor Lucas to Frederick Soliday in which the property intended to be conveyed was erroneously described as the east half of the southeast quarter of section 15 created a cloud upon the title to this property which the state and the present owners of the property are entitled to have removed. In this situation, it is obvious that Artamisha R. Breitenstein, as a condition of her right to receive from the Governor of this State a deed in proper form correcting the error made in the deed made by Governor Lucas to Frederick Soliday, should execute in proper form a deed to the State of Ohio in which for the use and benefit of the state and of the present owners of the record title to the east half of the southeast quarter of section 15, she will quitclaim and release any right, title and interest which she might have or claim to have in said tract of land.

Respectfully,

JOHN W. BRICKER,
Attorney General.