

shall not be applicable to bonds issued for the purpose under consideration. One of the limitations of this section is, as above commented upon, as to the amount of indebtedness which may be incurred without a vote of the people. The conclusion is, therefore, inescapable that when a schoolhouse has been destroyed by fire or other casualty, bonds may be issued for the purpose of building a new schoolhouse to take the place of the building so destroyed, without a vote of the people, to the extent of three per cent of the total value of all property in such school district as listed and assessed for taxation under the provisions of paragraph (c) of Section 2293-15, General Code, providing there then exists no indebtedness previously so excepted.

The amount of bonds which may be authorized under the above circumstances for such purpose in excess of three per cent without a vote of the electors would, of course, depend upon the amount, at such time, of any existing unvoted net indebtedness within the meaning of the first paragraph of Section 2293-15, *supra*. Following the reasoning contained in my Opinion No. 290, under date of April 10, 1929, addressed to Hon. J. L. Clifton, Director of Education, I am of the opinion that the maximum amount of bonds which may be issued for the above purpose without a vote of the electors, at any time, under the provisions of Section 2293-15, General Code, would be three and one-tenth per cent of the total value of all property in such school district as listed and assessed for taxation, provided that, at such time, there is in existence no unvoted net indebtedness under the first paragraph of this section and further provided that, at such time, there is in existence no indebtedness previously excepted under paragraph (c) thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

457.

APPROVAL, ABSTRACT OF TITLE TO LAND OF JULIUS AND DUCKE  
JOHANNSEN IN THE CITY OF FREMONT, SANDUSKY COUNTY,  
OHIO.

COLUMBUS, OHIO, May 28, 1929.

HON. A. W. REYNOLDS, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title and a warranty deed covering a certain tract of land in the city of Fremont, Sandusky County, Ohio, which you desire to acquire for the purpose of an armory site, and which property is more particularly described as follows:

Being a part of Outlot Number Fifty in said city of Fremont, commencing at a point on the north line of said Outlot and two hundred and sixty (260) feet northwesterly from the northeast corner of said Outlot; thence in a northwesterly direction, on the north line of said Outlot, one hundred (100) feet; thence southwesterly, at right angles to the north line of said Outlot, three hundred forty and one-half (340½) feet; thence southeasterly, parallel with the north line of said Outlot, one hundred (100) feet; thence northeasterly three hundred forty and one-half (340½) feet to the place of beginning.

An examination of the abstract of title submitted, shows that Julius Johannsen

and Ducke Johannsen have a good and indefeasible fee simple title to the above described tract of land, free and clear of all encumbrances or claims and interests therein, save and except the inchoate dower interests of their respective wives, and save and except the taxes for the last half of the year 1928, amounting to twenty-two (\$22.00) dollars, and the undetermined taxes for the year 1929. An adjustment of these taxes should, of course, be made before the deed conveying this property to the State of Ohio is accepted.

The deed to be signed by the said Julius Johannsen and Ducke Johannsen and their respective wives, is such as will, when the same is signed and otherwise legally executed and acknowledged by said persons, convey to the State of Ohio a fee simple title to said property, free and clear of the dower interests of the wives of Julius Johannsen and Ducke Johannsen, and free and clear of all encumbrances whatsoever. This deed, however, has not yet been signed by Julius Johannsen and Ducke Johannsen and by their respective wives, and it is suggested before the deed, when signed by said parties, is accepted by you, that the same be submitted to this department for its examination and approval.

You will note that in the deed form submitted, it is recited that the conveyance therein of the above described property to the State of Ohio is in consideration of "one dollar and other valuable considerations, received to our full satisfaction of the State of Ohio." If the transaction here in question were a purchase of this property by the State on a valuable consideration to be paid by the State therefor in excess of the sum of one dollar, I would be required to hold that before you are authorized to accept this deed that the actual consideration paid by the State of Ohio be set out therein.

However, I understand from advice received from your office that so far as the State of Ohio is concerned, and as between the State of Ohio and the grantors named in said deed form, the transaction here in question is a donation to the State of Ohio, and that the State is not to pay to said named grantors or to any other person or persons any money or other consideration for said property.

Touching this question, it is to be noted that the consideration clause in a deed of conveyance is conclusive for the purpose of giving effect to the operative words of the deed as an instrument for the conveyance of lands, but for every other purpose the recital of such consideration is open to explanation by parcel or proof, and is prima facie evidence only of the amount, kind and receipt of the consideration. With respect to the instrument here presented, the recital of the consideration received by the grantors is effective and conclusive for the purpose of giving effect to the deed, but otherwise such recital is not inconsistent with the fact that the purpose and intent of said deed is to donate this land to the state.

In this view no objection can be taken to the recital contained in this deed as to the consideration; and inasmuch as under Section 5239, General Code, you are authorized to receive gifts or donations of land to be deeded to the State of Ohio for armory site purposes, no objection can be taken to the transaction here in question, and the abstract and deed form submitted to me are hereby approved subject to the exceptions and reservations above mentioned.

Said abstract and deed form are herewith returned.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*