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STATUS PROPOSED PURCHASE BY STATE OF OHIO FOR
ADJUTANT GENERAL, PARCEL OF REAL ESTATE, CITY
OF KENT, PORTAGE COUNTY, OHIO, LOT 32, LAKE
STREET, 1.28925 ACRES, RECOMMENDATIONS FOR PRO-
CEDURE TO APPROVAL OF TRANSACTION.

COLUMBUS, OHIO, January 6, 1938.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: You recently submitted for my examination and approval a corrected abstract of title, a warranty deed, contract encumbrance record No. 100, Controlling Board certificate and other files relating to the proposed purchase by the State of Ohio of a parcel of real estate in the city of Kent, Portage County, Ohio, which parcel is a part of original Lot No. 32 and which is more fully described as follows:

Beginning at the point where the West line of said Lot No. 32 intersects the North line of Lake St., thence North $73^{\circ} 4'$ East along the North line of Lake St. 341.87 ft. to an iron pipe which is the true place of beginning; thence continuing North $73^{\circ} 4'$ East along the North line of Lake St. 234 ft. to an iron pipe; thence North $18^{\circ} 45' 30''$ West a distance of 240 ft. to an iron pipe; thence South $73^{\circ} 4'$ West a distance of 234 ft. to an iron pipe; thence South $18^{\circ} 45' 30''$ East a distance of 240 ft. to the place of beginning and containing 1.28925 acres of land.

Upon examination of the corrected abstract of title submitted to me, I find that The Mason Tire & Rubber Corp., the owner of record of the above described parcel of real estate, has a good merchantable title to this property, subject to the lien of the taxes on this property for the year 1937, the amount of which has not been segregated and determined, and subject to the encumbrance of a sewer of some kind in and under a part of the above described tract of land, and of an electric power line, the poles and wires of which have been constructed in and upon this land or a part of the same. There is nothing in the abstract of title submitted to me which shows by what right this sewer and electric power line were constructed in and upon this property. Neither is there anything in the abstract which shows the person or persons who have or may claim to have the right to maintain such sewer and electric power line in and

upon this parcel of land. In other words, it is not known by me whether these encumbrances were constructed and erected upon this property pursuant to deeds executed by some former owner or owners of this property granting to others the right to construct and erect this sewer and electric power line or whether these encumbrances are on the land merely as a matter of license given to some person or persons to construct and erect these encumbrances. As above noted, there is little or nothing said in the abstract of title about these encumbrances. However, in the warranty deed which The Mason Tire & Rubber Corp. has tendered to the State, the parcel of real estate above described is conveyed to the State of Ohio subject to reservations with respect to this sewer and electric power line, which reservations are set out in the deed as follows:

“Grantors herein reserve the right to enter on the premises herein described for the purpose of having access to the sewer running under said property for the purpose of making any necessary repairs or alterations. Said Grantors also reserve the right to enter upon said land to make necessary repair to the electric power line running over said property in so far as the same may be necessary.”

In a very practical sense, if not as a matter of law, this sewer and electric power line are encumbrances upon this property. Just how the same will affect the use which the State desires to make of this property for armory purposes is a matter to be determined by you from the facts which you have at hand or which you may secure from your engineers or other representatives with respect to the respective locations of these encumbrances and other facts and circumstances which may be material in determining whether you desire to purchase this property subject to these encumbrances as the same are set out in the reservations contained in said deed.

Upon examination of the warranty deed tendered to the State of Ohio by The Mason Tire & Rubber Corp., I find that I am unable to approve the same in its present form for the reason that although said deed in the body thereof purports to be the deed of The Mason Tire & Rubber Corp., as grantor, the same is executed by “The Kent National Bank, By George L. Morse, President.” I am, therefore, returning this deed to you without my approval, to the end that a proper warranty deed executed by The Mason Tire & Rubber Corp. may be executed and submitted for my examination and approval. In this connection, it is noted that the warranty deed above referred to does not contain a recital to the fact that said deed is executed

pursuant to the authority of the Board of Directors of The Mason Tire & Rubber Corp., although I presume that this is the fact. In this view, it is suggested that when the new deed is submitted to me, the same be accompanied by a certified copy of the minutes of some meeting of the Board of Directors of The Mason Tire & Rubber Corp., authorizing the execution of this deed by the hands of the President and Secretary of the corporation and such new deed, following the usual form of corporation deeds, should be executed by the hand of the Secretary of the corporation, as well as by that of the President. In making these observations with respect to the evidence of the authority conferred by the Board of Directors of the company to execute the deed requested, I am not unmindful of the fact that the deed now before me carries the imprint of the corporate seal of The Mason Tire & Rubber Corp., from which the authority of the Board of Directors of the company with respect to the execution of the deed may be presumed. However, it will be more satisfactory, I think, if all of the facts relating to the authority of the President and Secretary to execute the requested deed are set out in a copy of the resolution of the Board of Directors as above suggested.

Upon examination of contract encumbrance record No. 100, I find that the same has been properly executed with respect to the proposed purchase of the above described parcel of real estate and that there is shown thereby a sufficient balance in the appropriation account to the credit of the armory fund and otherwise unencumbered, to pay the purchase price of the parcel of real estate here in question, which purchase price is the sum of \$20,000.00. It likewise appears from the files submitted that the Controlling Board has approved the purchase of this property and has released from the appropriation account to the credit of the armory fund said sum of \$20,000.00, which is the purchase price of this property.

I am herewith returning to you said abstract of title as the same has been extended and corrected, the warranty deed above referred to, contract encumbrance record No. 100, the Controlling Board certificate and other files submitted to me in connection with this matter.

Respectfully,

HERBERT S. DUFFY,
Attorney General.