

2972.

APPROVAL, BONDS OF VILLAGE OF OAK HILL, JACKSON COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, July 30, 1934.

Industrial Commission of Ohio, Columbus, Ohio.

2973.

APPROVAL, BONDS OF VILLAGE OF OAK HILL, JACKSON COUNTY, OHIO, \$300.00.

COLUMBUS, OHIO, July 30, 1934.

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

2974.

APPROVAL, BONDS OF VILLAGE OF SALINEVILLE, COLUMBIANA COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, July 30, 1934.

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

2975.

APPROVAL, CONDITIONALLY, PHOTOSTATIC COPIES OF DEED FOR ABANDONED RIGHT-OF-WAY OF THE LIMA-DELPHOS VAN WERT-FORT WAYNE TRACTION COMPANY AND THE FORT WAYNE-VAN WERT-LIMA TRACTION COMPANY.

COLUMBUS, OHIO, July 30, 1934.

HON. O. W. MERRELL, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval photostatic copies of certain deeds concerning the abandoned right-of-way of the Lima-Delphos-Van Wert-Fort Wayne Traction Company and the Fort Wayne-Van Wert-Lima Traction Company. The copies of the deeds in which the Lima-Delphos-Van Wert-Fort Wayne Traction Company is grantee bear reference numbers on the reverse side of the photostatic copies of the deeds 43, 44, 45, 46, 48, 49, 50, 52, 53, 56, 58, 59, 60,

61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, and 80. Copies of the deeds in which the Fort Wayne-Van Wert-Lima Traction Company is grantee are numbered 51, 54, 55, 57, 73, 89. You also inclose a photostatic copy of a journal entry in a case in the Court of Common Pleas, *Paulina Sherrick vs. Griffith, John, et al*, Allen County, showing a conveyance of premises of right-of-way to the Lima-Delphos-Van Wert-Fort Wayne Traction Company. In addition you inclose a certified copy of a receiver's deed from Frank H. Cutshall, receiver for the Fort Wayne-Lima Railroad Company to Bernard P. Shearon, the decree and order of sale having been confirmed on November 23, 1933, by the district court of the northeast district of Ohio, western division, as well as a photostatic copy of the deed from Bernard P. Shearon and wife to Arch Robison, trustee. There is also inclosed a deed from the Lima-Delphos-Fort Wayne Traction Company, grantor, to W. F. Pearson, grantee.

Inasmuch as you have not submitted to me the evidence of title of the grantors in all these deeds, I am assuming for the purposes hereof, that such grantors had a good and indefeasible estate in fee simple to the property described in such deeds, free from any defects and encumbrances, and I express no opinion concerning the same.

From the examination of the copies of such deeds submitted, bearing in mind the assumption contained in the preceding paragraph, it would appear that such deeds conveyed the fee title to the premises therein described, to the Lima-Delphos-Van Wert-Fort Wayne Traction Company in those deeds in which such company was made grantee, and it would appear that such deeds conveyed the fee title to the premises therein described to the Fort Wayne-Van Wert-Lima Traction Company in those deeds in which such company was named grantee therein with the following exceptions:

In deed No. 59, from John Foust and Josephine Foust, his wife, to the Lima-Delphos-Fort Wayne Traction Company there is no acknowledgment of either of the grantors. I would recommend that such acknowledgment be obtained or a new deed of such premises obtained.

In deed No. 64, from Christina Scott, et al, to the Lima-Delphos-Van Wert Traction Company, one of the grantors, namely Frank Evans, did not sign the deed. Consequently there is no conveyance whatsoever of the interest of Frank Evans. If Frank Evans was a part owner of this parcel, you should obtain a deed of his interest to such, or if his interest was a dower interest, you should obtain a release of his dower. Also I find that Aggie Luttrell and Tobias Luttrell did not acknowledge their signatures and therefore you should obtain such acknowledgment or a deed conveying their interest in the premises.

In deed No. 89, from the Pittsburgh, Fort Wayne and Chicago Railroad Company, the grantor, to the Fort Wayne-Van Wert-Lima Traction Company, the grantee, it appears that the Pennsylvania Railroad Company is the lessee of the Pittsburgh-Fort Wayne-Chicago Railway Company, under a lease for nine hundred and ninety-nine years beginning July 1, 1869. I cannot tell without a copy of that lease whether or not the Pennsylvania Railroad Company, lessee of grantor railway company, has or has not any interest in the premises conveyed. If they did have such interest they have not conveyed it away inasmuch as they merely consented to the execution of the deed and the transfer of the property therein described by the Pittsburgh-Fort Wayne-Chicago Railway Company, but have not released any interests that they might have therein.

In deed No. 47, there is a form of a deed from the Lima-Delphos-Van

Wert-Fort Wayne Traction Company to W. F. Pearson, but such alleged deed is neither acknowledged nor witnessed and consequently conveyed no legal interest to W. F. Pearson. However, if such grantee entered into possession of the premises he no doubt could get specific performance as against the Lima-Fort Wayne-Delphos Traction Company for this particular parcel. If such is the case, I would advise that both W. F. Pearson and the Lima-Delphos-Van Wert-Fort Wayne Traction Company convey their interest in obtaining title to this particular parcel to the Highway Department.

I come now to a consideration of the deed of Frank Cutshall, receiver for the Fort Wayne-Lima Railroad Company to Bernard P. Shearon. It must be noted in this particular receiver's deed that Bernard P. Shearon took title to the property described therein subject to all taxes, assessments and other liens against the assets and properties sold, except free and clear of the general mortgage of the Fort Wayne-Lima Railroad Company executed by it to the Old National Bank of Fort Wayne. It must also be noted that the conveyance did not include any bridges, trestles or culverts located upon the property therein described nor any portion of the right-of-way formerly used by the Fort Wayne-Lima Railroad Company and located in any street or highway.

In the deed from Bernard P. Shearon and wife to Arch Robison, trustee, the property was taken subject to the prior lien of taxes and assessments lawfully levied or assessed on said property or any part thereof of the State of Ohio, of any county, municipality thereof, which the grantee, by acceptance of the deed, assumes and agrees to pay, and is also subject to two easements; one contained in the agreement between the Indiana Service Corporation and Henry C. Paulas, receiver of the Fort Wayne-Van Wert-Lima Traction Company, dated August 1, 1923, wherein said service corporation was granted a perpetual right and easement to construct, maintain and operate a high tension electric transmission line along the real estate therein contained; and the other contained in an agreement between the Fort Wayne-Lima Railroad Company and the West Ohio Gas Company, wherein said West Ohio Gas Company was given the right to lay, construct, install, maintain, replace and repair a four-inch gas line along the right-of-way of the said Fort Wayne-Lima Railroad Company from what was known as Stop Five west of the City of Lima to the east corporation line of the City of Delphos, dated August 6, 1930, and subject further to a perpetual easement over all of said right-of-way therein conveyed which was reserved by the grantors and which may be transferred by them to construct, maintain and operate a line or lines with necessary poles, towers, structures, wires, cables, and appurtenances for the transmission, distribution and delivery of electrical energy to other persons and concerns and to the public in general for light, heat, power, telephones and/or other purposes in, upon, along and over the real estate therein granted; also subject to a further perpetual easement to a right-of-way which is reserved by the grantors in this deed and may be transferred by them for the construction, installation, maintenance and operation of a line or lines for the transmission, distribution and delivery of gas to other persons and concerns and to the public in general for light, heat, power, and/or other purposes in and along the real estate therein granted provided that the construction, maintenance and operation of such lines where electrical energy between Lima and Delphos, Ohio, shall be so built as not to conflict with the electrical transmission lines located thereon. Also the conveyance as made did not include any bridges, trestles or culverts located upon the property described nor did it include any

portion of the right-of-way formerly used by the Lima-Fort Wayne Traction Company and located in any street or highway.

You have not submitted to me any evidences of conveyances from the Lima-Delphos-Van Wert-Fort Wayne Traction Company to the Fort Wayne-Van Wert-Lima Traction Company or from either of these companies to the Fort Wayne-Lima Railroad Company, the company in receivership, the receiver of which company conveyed the right-of-way in question to Bernard P. Shearon, the latter conveying the right-of-way to Arch Robison, trustee; consequently I must limit my opinion to the evidences of title submitted to me and assume that the grantors named in the deeds submitted to me had a good and indefeasible estate in fee simple to the property described therein free from any defects or encumbrances and then the grantees named in such deeds, if there were no further changes in the title, could convey good legal title to the premises described therein to the State for highway purposes with the following exceptions which I now summarize:

1. The alleged deed from John Foust and Josephine Foust, (No. 59) was not acknowledged.

2. Deed No. 64 in which Frank Evans did not convey away his interest; Aggie Luttrell and Tobias Luttrell did not acknowledge.

3. Deed No. 89 in which the interest of the railroad company is not shown.

4. Deed No. 47 from the Lima-Delphos-Van Wert-Fort Wayne Traction Company to W. F. Pearson which deed is neither acknowledged nor witnessed but under which W. F. Pearson may have some interest.

5. You must also note the qualifications mentioned above in the receiver's deed to Bernard P. Shearon, which easements would run with the land if the Highway Department acquired title to such land.

6. You must also note the qualifications mentioned in the deed from Bernard P. Shearon to Arch Robison, trustee, mentioned supra, which easements would run with the land if the Highway Department acquired title to the same.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2976.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CONTRACT FOR PAYMENT OF PREMIUMS ON "PUBLIC LIABILITY" OR "PROPERTY DAMAGE" INSURANCE ON COUNTY OWNED MOTOR VEHICLES.

SYLLABUS:

1. *A board of county commissioners cannot legally enter into a contract and expend public monies for the payment of premiums on "public liability" or "property damage" insurance covering damages to property and injury to persons caused by the negligent operation of county owned motor vehicles.*

2. *In the event a county does take out such insurance, there could be no liability against the insurance company in favor of a third person who was injured, as a result of the negligent operation of a county owned motor vehicle.*