

107.

STATUS—ABSTRACT OF TITLE, DEED, ETC., STATE THROUGH CONSERVATION COMMISSIONER, DESIGNATED LAND, JOHN ROTH, GRANTOR, ALLEN TOWNSHIP, HANCOCK COUNTY, OHIO, USE, ARTIFICIAL LAKE AND PARK PURPOSES.

COLUMBUS, OHIO, February 7, 1939.

HON. D. G. WATERS, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 44 and other files relating to the purchase and acquisition by the Conservation Council for and in the name of the State of Ohio of a tract of land owned of record by one John Roth in Allen Township, Hancock County, Ohio, and which is more particularly described as follows:

Situated in Section 18, T. 2 N., R. 11 E., Allen Township, Hancock County, Ohio, and being all lands in the southwest quarter of the northeast quarter of said Section 18, and all lands in the southeast quarter of the northwest quarter of said Section 18, belonging to the grantor, and a strip of land along the south side of the northwest quarter of the northeast quarter of said Section 18 and a strip of land on the south and west sides of the land owned by the grantor in the northeast quarter of the northwest quarter of said Section 18 and more particularly described as follows:

Beginning at a point in the southeast corner of the southwest quarter of the northeast quarter of Section 18, said point being in the center of a common corner post between the lands of the grantor, Arbey D. Barnd, F. and M. Romick, and Henry Burman and running S. 89° 56' W. along the property line between the grantor and A. B. Barnd and between the grantor and B. E. Barnd and between the grantor and Sarah Roberts, said line being the half Section line of said Section 18, a distance of 2513.89

feet to a point, said point being the common corner between the lands of the grantor and the right of way of the N. Y. C. railroad and lying in the north property line of the lands of Sarah Roberts; thence N. $0^{\circ} 1' E.$ along the property line between the grantor and said N. Y. C. railroad right of way a distance of 484.70 feet to a point; thence S. $89^{\circ} 59' E.$ a distance of 50 feet to a point; thence N. $0^{\circ} 1' E.$ 50 feet from and parallel to the original line between the grantor and said railroad right of way, a distance of 620 feet to a point; thence N. $89^{\circ} 59' W.$ a distance of 50 feet to a point, said point lying in the original property line between the grantor and said railroad right of way; thence N. $0^{\circ} 1' E.$ along said property line a distance of 1527.54 feet to a point, said point being the intersection point of the center line of a county road and the east property line of said railroad right of way, said point also being the northwest corner of the lands of the grantor; thence N. $89^{\circ} 41' E.$ along said center line of county road, a distance of 50 feet to a point; thence S. $0^{\circ} 1' W.$ 50 feet from and parallel with the east property line of said N. Y. C. railroad right of way a distance of 1119.89 feet to a point; thence due east a distance of 1250.00 feet to a point; thence due north a distance of 50 feet to a point; thence due east a distance of 1206.67 feet to a point, said point being in the property line between the grantor and Henry Burman, said point also being in the north-south quarter section line of the northeast quarter of said Section 18; thence S. $1^{\circ} 0' E.$ along said quarter section line a distance of 230.29 feet to a point, said point being in the center of the northeast quarter of said Section 18; thence continuing along said quarter section line S. $0^{\circ} 7' E.$ a distance of 1329.18 feet to the place of beginning and containing 89.09 acres more or less and subject to all legal highways.

Upon examination of the abstract of title submitted to me, I find that said John Roth has a good and indefeasible fee simple title to the above described tract of land and that he owns and holds the same free and clear of all encumbrances other than those herein noted as exceptions to the title in and by which said John Roth now owns and holds this property, to wit:

1. On April 26, 1928, John Roth, then unmarried, executed a mortgage to The Connecticut Mutual Life Insurance Company to secure an obligation and indebtedness of even date therewith in the sum of \$6,000.00. This mortgage, which covers the above described and other lands of John Roth, is not canceled of record and the same is a lien on the property here under investigation to the extent of the amount of money remaining due upon the obligations secured thereby, together with the accrued interest thereon. In this connection, it is noted that on May 17, 1933, and later

under date of April 26, 1938, extension agreements relating to and extending the time for the payment of the obligation secured by this mortgage were executed by The Connecticut Mutual Life Insurance Company, the mortgagee named in this instrument, which extension agreements and the terms and provisions of which were accepted by said John Roth and by Hazel Roth, his wife. In and by the last extension agreement above noted, it is provided that John Roth, the mortgagor named in this instrument, is to pay \$100.00 on or before May 1, 1939, and \$100.00 each year thereafter during the extended term provided for in this agreement and that the balance due on this obligation, amounting to the sum of \$4200.00, is to be paid on May 1, 1948, unless sooner paid, and further said John Roth is to pay the interest on this obligation as the same becomes due and payable. Needless to say in this situation this mortgage should be canceled and released of record before the transaction is closed for the purchase of this property by the issue of voucher and warrant covering the purchase price of such property; or the particular tract of land here under investigation should be released from the operation of the mortgage by a formal release in proper form executed by The Connecticut Mutual Life Insurance Company, the mortgagee named in this instrument.

2. The taxes on this property for the year 1938 are unpaid and are a lien on the property. Apparently, the taxes which now stand as a lien against this property have been extended against a larger tract of 151 acres of land which includes the tract here under investigation. The taxes on this particular tract of land, above described, should be segregated by the County Auditor and such taxes so segregated should be paid or provision for the payment of the same should be made before the transaction for the purchase of this property is closed by the payment of the purchase price therefor.

Upon examination of the warranty deed tendered to the State by said John Roth, I find that said deed has been properly executed and acknowledged by said grantor and by Hazel Roth, his wife, and that the form of this deed is such that the same is legally sufficient to convey the above described tract of land to the State of Ohio by fee simple title, together with all the privileges and appurtenances thereunto belonging, except such as are expressly reserved in the deed; and said property is by this deed conveyed to the State free and clear of the dower right and interest of said Hazel Roth, with a covenant in said deed that said premises are free and clear of all encumbrances except those relating to the reservations above referred to, which reservations are set out in said deed as follows:

“EXCEPTING THAT it is further understood by and between the grantee and the grantor that if the grantor wishes to have the cowshed and corn-crib removed from the above-described property on or before January 1, 1943, they shall be moved to the land of the grantor by the grantee and placed upon foundations furnished by the grantor.

It is also understood that the grantor shall have free use of and access to the above-mentioned cowshed and corncrib.

It is further understood and agreed that the grantee is to continue to use the gas from the one well which is located on the above-described property as long as the well is in a usable condition, but the grantee does not give to the grantor the right of or access to this well in order to clean or repair same."

Upon examination of contract encumbrance record No. 44, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the transferred appropriation account of the Division of Conservation under Amended Senate Bill No. 369, enacted by the 92nd General Assembly, to pay the purchase price of this property, which purchase price is the sum of \$6786.00. And in this connection, it is noted that under date of November 29, 1938, the Controlling Board, acting under the authority of the provisions of Amended Senate Bill No. 369 making appropriations to the Division of Conservation, transferred to the budget item of G-1 Lands the sum of \$10,000.00 for the purpose of covering the purchase of the above described lands and of other lands contiguous thereto which are to be used for artificial lake and park purposes under the supervision and control of the Conservation Council. Under the provisions of the appropriation act above referred to, the Controlling Board was authorized, among other things, to make this transfer of moneys to carry out any of the purposes mentioned and provided for in Section 1430, General Code. Although the provisions of this section relate more particularly to the use of the moneys therein provided for for fish propagation and conservation purposes, this section likewise provides for the use of such moneys "for other proper conservation activities" which under Section 472, General Code, and under Section 1438-1, General Code, referred to in Section 1430, General Code, would include the acquisition of lands for park purposes and the supervision and maintenance of the same. In this connection, it is quite apparent that the proceedings relating to the purchase of this property before the expiration of the 1937-1938 biennium terminating in the tender by grantor of his warranty deed under date of December 30, 1938, conveying this property to the State of Ohio, had the effect of imposing an obligation upon the State and the moneys appropriated for the purchase of this property, conditional only upon the fact that the grantor had at that time a good merchantable title to this property. And on this view and by reason of the fact that unexpended balances in appropriation accounts under Amended Senate Bill No. 369, enacted by the 92nd General Assembly, against which obligations have been incurred, have been reappropriated in the partial appropriation act enacted by the 93rd General Assembly, it follows that the moneys set aside for the purchase of this property as indicated in and by contract encumbrance record No. 44 are available for the payment of the purchase of this property.

Subject only to the exceptions above noted, the title of John Roth in

and to the above described property is approved as are said warranty deed, contract encumbrance record No. 44 and other files relating to the purchase of this property, all of which are herewith returned. Inasmuch, however, as under the provisions of Section 472, General Code, the purchase or other acquisition of lands for the construction of any public park, resorts, reservoirs, channels, drives, roadways, docks, dams, landings, and other improvements, are subject to the approval of the Attorney General, you are requested to defer the issue of any voucher or vouchers covering the purchase price of this property until I have the benefit of such further information touching questions relating to the desirability of constructing a public reservoir and park at this point and to other matters pertinent in the consideration of this proposition. I trust that I may be able to address you further on this matter within the next few days.

Respectfully,

THOMAS J. HERBERT,
Attorney General.