

rendered to the Industrial Commission of Ohio under date of February 6, 1928, being Opinion No. 1682.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

191.

APPROVAL—BONDS OF CITY OF TOLEDO, LUCAS COUNTY,
OHIO—\$7,000.00.

COLUMBUS, OHIO, March 1, 1937

State Employes Retirement Board, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of Toledo, Lucas County, Ohio—
\$7,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated March 1, 1927. The transcript relative to this issue was approved by this office in an opinion rendered to the State Teachers Retirement System under date of June 11, 1935, being Opinion No. 4331.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

192.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, ETC.
LAND IN JOHNSON TOWNSHIP, CHAMPAIGN COUNTY,
OHIO.

COLUMBUS, OHIO, March 1, 1937

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examinatoon an abstract

of title, warranty deed, contract encumbrance record No. 23 and other files relating to the purchase of a tract of land in Johnson Township, Champaign County, Ohio, which the Conservation Council has purchased for reservoir and park purposes under the authority conferred upon it by section 472, General Code.

This tract of land, which is now owned of record by one Joseph W. Licklider, is more particularly described as follows:

Beginning at a point in the southeast corner of the Northwest Quarter of Section 22, Johnson Township, Champaign County, Ohio, Town 3 East, Range 12 North, which is a common corner of the J. W. Licklider, Ella Frank, Hallet L. Hunt and Geo. R. Kiser farms; thence South $89^{\circ} 58'$ West, 2180.00 feet to a concrete monument; thence North $0^{\circ} 21'$ East, 229.23 feet to a concrete monument; thence North $88^{\circ} 06'$ West, 292.0 feet, more or less, to the center of State Route No. 69; thence with said center line in a northerly direction to the intersection with the center line of Mosquito Creek; thence South and east with the center line of the creek to the intersection of the said center line with the east line of the Northwest Quarter of Section No. 22; thence South $1^{\circ} 16'$ East, 291.84 feet to the place of beginning, containing 43.72 acres, more or less. This tract of land is the tract deeded to Joseph W. Licklider by Harley Mahan, et al., and recorded in Deed Book No. 104, Page 186, of Champaign County Recorder's office. As per new survey by Ohio Department of Conservation.

Upon examination of the abstract of title submitted to me, which abstract of title is certified by the abstracter under date of February 3, 1937, I find that Joseph W. Licklider acquired his title to the above described tract of land under date of February 7, 1922, by deed from Harley Mahan and Ola Mahan who acquired title to this property and to a larger tract of land by the deed of one Guy Putnam, as administrator of the estate of William E. Clem, deceased, who owned and held this larger tract of land at the time of his death December 17, 1920.

The deed executed by Guy Putnam, as administrator of the estate of William E. Clem, deceased, to Harley Mahan and Ola Mahan, which was under date of December 3, 1921, was so executed pursuant to an order of the Probate Court of Champaign County in a proceeding filed in that court by said Guy Putnam, as administrator, for an order of the court to sell this property to pay the debts of the estate of William E. Clem. I find from my examination of this abstract that there

were certain irregularities amounting, perhaps, to manifest error with respect to the representation in this case of two of the defendants therein, children and heirs of William E. Clem, who were under legal disability at the time said case was filed and at the time when, pursuant to order of the court, Guy Putnam, as administrator of the estate of William E. Clem, executed his deed to Harley Mahan and Ola Mahan. However, it is quite clear from the abstract of title and from other information at hand that the court had jurisdiction of the persons of each of the defendants here referred to and the irregularities and errors relating to their representation in the case were not such as could be the predicate of a collateral attack upon the title of the property in the hands of purchasers for value of the property of William E. Clem, deceased, which was involved in this proceeding. The lapse of time and the provisions of section 11633, General Code, render the title of Joseph W. Lickliger to the above described property invulnerable to any attack that might be made upon the same by reason of the irregularities in the court proceedings above referred to.

As above noted, Joseph W. Lickliger acquired title to this property by deed of conveyance from Harley Mahan and Ola Mahan under date of February 7, 1922. At this time Joseph W. Lickliger was married to one Melva Lickliger, who was an insane person and had been so adjudged apparently some time prior to the 3rd day of June, 1920, when she was received at the Columbus State Hospital for the Insane where she is now confined.

Inasmuch as Joseph W. Lickliger acquired his title to this property after Melva Lickliger was adjudged insane and committed to the Columbus State Hospital, this property with respect to the acquisition thereof by Joseph W. Lickliger and its conveyance to the State of Ohio is subject to the provisions of Section 12025, General Code, as to the inchoate dower interest which Melva Lickliger, as the wife of Joseph W. Lickliger, would otherwise have in the property. Section 12025, General Code, provides as follows:

“Any real estate or interest therein coming to a person by purchase after the husband or wife of such person is adjudged insane, and is an inmate of an asylum for the insane in this state, or confined in the insane department of any epileptic hospital of this state, or any state of the United States, may be conveyed by such person while such insane husband or wife remains an inmate thereof, free and clear from any dower right or expectancy of such insane person. Dower shall not attach to any real estate both so acquired and conveyed during the time aforesaid in favor of such insane person. The indorse-

ment upon the instrument of conveyance, by the superintendent of the asylum, that such husband or wife is an insane inmate thereof, stating when received therein and signed officially by him, shall be sufficient evidence of the fact that he or she is such inmate. This indorsement shall be a part of the instrument of conveyance."

I note in this connection that pursuant to the provisions of this section the Superintendent of Columbus State Hospital has endorsed upon the deed executed by Joseph W. Licklider for the purpose of effecting the conveyance of this property to the state, a certificate which is in words and figures as follows, to wit:

"COLUMBUS, OHIO, February 16, 1937.

Melva Licklider, wife of the grantor in this deed is an insane inmate in the Columbus State Hospital, a State Institution of the State of Ohio, and was adjudged insane by the Probate Court of Champaign County, Ohio, and was received at said Institution on the 3rd day of June, 1920, and is now and has been ever since an inmate of said intitution, and this indorsement is made in compliance to Section 12025 of the General Code of the State of Ohio.

COLUMBUS STATE HOSPITAL

(Signed) J. F. BATEMAN, M. D.,

Superintendent."

Upon the considerations above noted, I am of the opinion that the deed of Joseph W. Licklider, hereinafter referred to, will be effective to convey this property to the State of Ohio free and clear of any claim of dower interest in Melva Licklider, the wife of said Joseph W. Licklider. Moreover, on consideration of this abstract of title, I find that Joseph W. Licklider has a good merchantable fee simple title to the above described tract of land and that the same is free and clear of all liens and encumbrances except those hereinafter mentioned as exceptions to the title in and by which he owns and holds this property:

1. On December 18, 1931, Joseph W. Licklider by an instrument in deed form conveyed to the State of Ohio a certain right and easement in a parcel of .053 of an acre of land included in that acquired by him from Harley Mahan and Ola Mahan, for use in connection with a change in the channel of Mosquito Creek thereafter made by the Department of Highways incidental to a highway improvement. And later, to wit, on January 30, 1932, said Joseph W. Licklider by deed conveyed to the State of Ohio an easement in another parcel containing

.025 of an acre of land in connection with the improvement of a highway in and along the property here in question. I assume that these easements so granted to the State of Ohio and the improvements made by the State Highway Department pursuant to the same are known to you or to your engineers and agents in charge of the Kiser Lake improvement and that the survey which your department has made of the property of Joseph W. Lickliger to be conveyed to the State of Ohio in connection with the Kiser Lake project was made with reference to the prior easements granted to the State of Ohio in connection with the state highway improvements here referred to.

2. On November 11, 1935, Joseph W. Lickliger conveyed by deed to Farm Bureau Rural Electrification Cooperative, Inc., a right of way or easement for the construction of electric lines with necessary poles, wires and other distributing appliances with the provision that the route of said lines across the lands of the grantors should be as follows: "Along the East side of the State Route 69 as now or hereafter located. Within 10 ft. of highway limits and or not more than 10 ft. from highway limits." On June 30, 1936, this easement or right of way was assigned by Farm Bureau Rural Electrification Cooperative, Inc., to Pioneer Rural Electric Cooperative, Inc. The abstract of title does not show what, if anything, has been done by either of these corporations under this easement granted by Joseph W. Lickliger; nor do I have any other information as to whether these electric lines have been constructed or not. This fact, as well as the effect of the construction of such lines, is doubtless known to your department. This easement is here mentioned for the reason that as a matter of law the same is an encumbrance upon the property and as such constitutes an exception to the title in and by which Joseph W. Lickliger owns and holds the property here in question.

3. On April 16, 1932, Joseph W. Lickliger executed a mortgage on the above described property to one Mattie Stoddard for the purpose of securing the payment of a promissory note of even date therewith in the sum of \$1,000.00. This mortgage has not been canceled of record and the same to the extent of the amount remaining unpaid upon the note secured thereby, together with interest thereon, is an encumbrance upon this property and the same should be paid and canceled before the transaction for the purchase of this property is closed by the issuance of voucher and warrant covering the purchase price thereof.

4. It is shown by the abstract that the taxes on this property for the year 1936, amounting to the sum of \$17.06, are unpaid and are a lien upon the property. Inasmuch as the deed which has been tendered by Joseph W. Lickliger to the State of Ohio for the conveyance of this property recites that the same is to be conveyed free and clear of all

encumbrances whatsoever, I assume that Joseph W. Lickliger, the grantor, is to pay these taxes and this should, of course, be done before the transaction is closed for the purchase of this property by your department.

Upon examination of the deed tendered by Joseph W. Lickliger, I find that the same has been properly executed and acknowledged by said grantors and that the form of this deed is such that the same upon acceptance thereof by your department will be sufficient to convey this property to the State of Ohio free and clear of any claim of dower on the part of Melva Lickliger, the wife of Joseph W. Lickliger, with the covenant therein contained that this property is free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 23, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and the same shows that there is an unencumbered balance in the appropriation account to the credit of the Department of Agriculture—Bureau of Lakes and Parks—sufficient in amount to pay the purchase price of this property, which purchase price is the sum of \$3,171.37.

It likewise appears by way of recital in this contract encumbrance record, as well as by the certificate of the Controlling Board, that the purchase of this property, together with other real property needed in connection with the Kiser Lake project, has been approved by said Controlling Board and that said Board has released from the appropriation account the money necessary to pay the purchase price or prices thereof.

Inasmuch as Section 472, General Code, which authorizes the Conservation Council to purchase the property here in question for the purpose above stated, provides that such purchase shall be subject to the approval of the Attorney General, I herewith approve the purchase of the above described property as is evidenced by my approval endorsed upon the deed executed by Joseph W. Lickliger and by which this property is to be conveyed to the State of Ohio.

Subject only to the exceptions above noted, I approve the title of Joseph Lickliger in and to this property. I likewise approve the warranty deed, contract encumbrance record and other files relating to the purchase of this property, all of which, together with the abstract of title, is herewith returned to you for your further action in connection with the purchase of the property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.