

2392.

APPROVAL, ABSTRACT OF TITLE TO LAND OF B. D. NICOLA, FOR
HAWTHORNDEN FARM, CLEVELAND STATE HOSPITAL, CUYAHOGA
COUNTY, OHIO

COLUMBUS, OHIO, July 26, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have resubmitted for my examination and opinion an abstract of title pertaining to certain real estate situated in Bedford Township, Cuyahoga County, which the State of Ohio proposes to purchase from B. D. Nicola, for the Hawthornden Farm of the Cleveland State Hospital. This matter has been the subject of two prior opinions, the first being Opinion No. 2308, directed to you under date of July 2, 1928, and the second being Opinion No. 2343, directed to you under date of July 11, 1928. In the last mentioned opinion you were advised that, in my opinion, the abstract of title, together with the accompanying additional evidence, shows a good and merchantable title to the property in question in B. D. Nicola, subject to a mortgage from William J. O'Brien to Elizabeth V. Sawicki and The Cleveland Trust Company, Trustee, dated May 14, 1926, the consideration stated being the sum of Ten Thousand Dollars (\$10,000.00), and taxes for the year 1928 and any assessments that may have been levied against the property.

At the time the opinion last above mentioned was rendered I did not have before me an encumbrance estimate, nor was I supplied with evidence showing that the Controlling Board had released and consented to the expenditure of the money necessary for the purchase of the property, and I was therefore unable to render an opinion upon the same.

You have now submitted an encumbrance estimate bearing No. 1183, issued in favor of Benjamin D. Nicola, in the sum of Fifteen Thousand Three Hundred and Thirty-five Dollars and Twenty-nine Cents (\$15,335.29), for the purchase of the tract above referred to, which tract contains 43.198 acres of land, bearing the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to pay for the same.

You have also furnished evidence that on July 18, 1928, the Controlling Board released the sum of Twelve Hundred and Eighty-five Dollars and Twenty-nine Cents (\$1,285.29) to supplement the sum of Sixteen Thousand Dollars (\$16,000.00) released under date of March 20, 1928, for the purchase of the above property and other real estate.

Finding said encumbrance estimate in proper legal form and properly executed, and finding that the Controlling Board has consented to the expenditure of the necessary money for the purchase of the property, I hereby approve the same.

You have also submitted a warranty deed from Benjamin D. Nicola to the State of Ohio covering the real estate in question, in which Harriet S. Nicola, wife of Benjamin D. Nicola, releases her right of dower. In the deed Benjamin D. Nicola warrants the real estate to be free from all encumbrances whatsoever except taxes for the year 1928 and thereafter. It appears that inadvertently there was omitted from the warranty clause a reference to a right of way granted by the executors and trustees under the will of Valentine Christ to the East Ohio Gas Company, under date of February 13, 1923, for the purpose of laying, maintaining, operating and removing a pipe line for the transportation of oil or gas over and through the real estate in question. In view of the fact that reference to the right of way in question was omitted through inadvertance, I am of the opinion that the deed should be redrafted, excepting said right of way in the warranty clause, and should be re-executed.

You also ask my opinion as to how the matter of the Ten Thousand Dollar (\$10,000.00) mortgage above referred to should be handled in the completion of the transaction. I would suggest that when the date for closing the transaction had been determined, information should be obtained from the mortgagees as to the balance due on the mortgage as of that date. A warrant should then be issued in favor of the mortgagees, and upon delivery of said warrant to the mortgagees the canceled mortgage should be obtained and the cancellation immediately placed on record.

In connection with the right of way above referred to, while the same is an encumbrance on the property, I note among the papers submitted a letter from the Superintendent of the Cleveland State Hospital to the effect that the existence of said right of way will not interfere with the use of the property by the State.

I am returning herewith the abstract of title, deed and all other papers submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2393.

APPROVAL, ABSTRACT OF TITLE TO LAND OF W. S. SHAFFER, IN
GILEAD TOWNSHIP, MORROW COUNTY, OHIO.

COLUMBUS, OHIO, July 26, 1928.

HON. CHAS. V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of an abstract of title of certain lands in Gilead Township, Morrow County, Ohio, being a part of the Northeast Quarter (N. E. $\frac{1}{4}$) and the Northwest Quarter (N. W. $\frac{1}{4}$) of Section One (1), Township Thirteen (13), Range Twenty-one (21), and a part of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section Six (6), Township Seventeen (17) and Range Twenty (20), described as follows, to-wit:

“Commencing at a point in the center of the Mt. Gilead and Mt. Vernon State Road at a cross mark in the cement 590 feet east of the center of the cement bridge and at the Southwest corner of a tract of land formerly owned by Rachel Duncan. Thence easterly along the center of said road South 75° 30' East 278.3 feet; thence South 58° 15' East along the center of said road 209.4 feet; thence South 55° 30' East along the center of said road 293 feet to a corner with a cross mark in the cement; thence North 0° 30' East 268 feet; thence along the south line of the old mill race at high water mark North 77° 30' East 154.2 feet; thence South 78° 30' East 218.5 feet; thence North 73° 30' East 353.1 feet; thence North 56° 30' East 251.2 feet; thence South 89° 45' East 163.5 feet; thence South 47° East 105.9 feet to the south end of the old Mill Dam. Thence along the high water mark at approximately the following lines, to-wit: South 47° 30' East 163 feet, thence South 80° East 495.2 feet; thence North 32° East 187.3 feet; thence East 204.4 feet; thence South 83° East 578.1 feet; thence South 64° 30' East 322.2 feet to the east line of said Section One (1) at a corner. Thence South along said section line 2° West 945 feet to the center of the Mt. Gilead and Mt. Vernon road. Thence South 87° East along the center of said road 182.3 feet; thence North 2° East parallel with the section line 2386 feet to a corner, being the