

Specifically answering the question that you present, it is my opinion that the phrase "at the first meeting in January," as used in Section 3019, General Code, is directory rather than mandatory and a board of county commissioners has authority to make the allowance therein provided at a later meeting of such board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1945.

APPROVAL, ABSTRACT OF TITLE TO LAND OF EDWARD CUNNINGHAM AND CAROL CUNNINGHAM, IN NILES TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, April 7, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my opinion an abstract of title in a deed executed by Edward Cunningham and Carol Cunningham, his wife, covering the following lands situated in Nile Township, Scioto County, and more particularly described as follows:

FIRST TRACT: Lying and being on the waters of Turkey Creek, a branch of the Ohio River, within the Virginia Military District. Beginning at a stone in Williamson's Run; thence N. 23 degrees 45' E. 8 poles to a gum on the hillside; thence N. 38 deg. 45' E. 19 poles 22 links to a stone; thence N. 44 deg. 30 E. 16 poles to a black oak; thence N. 42 deg. E. 19 poles 12 links to a black oak; thence N. 42 deg. 30' E. 14 poles to a pine; thence N. 47½ deg. E. 12 poles to chestnut oak on top of a high knob, the original corner being a pine; thence with the original line reversed N. 36 deg. 45' E. 13½ poles to a stake on the ridge; thence N. 7 deg. E. 12-84/100 poles to a stake one rod E. of top of the ridge; thence N. 27½ deg. crossing the Northern line of Survey No. 15890 at 12-15/100 poles, 18-48/100 poles to a stake by a black oak on top of the ridge; thence N. 54 deg. W. 38-72/100 poles to a chestnut oak on top of the ridge; thence N. 20 deg. W. 11-21/100 poles to a stake on the ridge between Williamson's Run and Long Hollow; thence N. 27 deg. 38-38/100 poles to a pine and 2 hickories from one root on top of the hill N. corner to William Walker's tract and O. A. and M. C. lands; thence N. 23 deg. 30' W. 14 poles to a stake and small pine on top of the ridge between Harbert Fork and Turkey Creek; thence S. 45 deg. 15' W. 17 poles to a stake from which a pine six inches in diameter bears N. 18 deg. E. 19 links on the ridge; thence S. 35 deg. 35' W. 30-20/100 poles to a stake on top of the ridge; thence S. 32 deg. E. 18-24/100 poles to a stake and chestnut oak on top of ridge; thence S. 27 deg. 45' E. 12-52/100 poles to a stake and chestnut oak on the ridge; thence S. 5 deg. 15' E. 111-24/100 poles to a stake on top of ridge; thence S. 43 W. 26 poles to a chestnut oak on top of hill; thence down the hill S. 4 deg. E. 4 poles to a double chestnut oak; thence S. 20 deg. E. 16 poles to a pine; thence S. 2 deg. E. 14 poles 20 links to a chestnut oak; thence S. 10½ deg. E. 24 poles to a black oak; thence

S. 11 deg. E. 16 poles to a double black oak; thence S. 43 deg. E. 7 poles to the beginning corner; containing Eighty (80) Acres, more or less; thirty-eight and seventy-six hundred hundredths (38-76/100) acres of O. A. M. C. Lot No. 19 and Forty-one and twenty-four hundredths (41-24/100) acres of Survey No. 15890.

SECOND TRACT: Beginning at a pine on top of the ridge between Long Hollow and Williamson Run one of the original corners of the tract of land of which this is a part; thence $44\frac{1}{4}$ deg. W. $30\frac{1}{2}$ rods to a stake, a corner to a tract of land, containing $7\frac{3}{10}$ acres, surveyed for William Moore; thence with a line of said tract N. $62\frac{3}{4}$ deg. W. 73 rods crossing a branch to a small hickory and two black oaks on a point, corner to Wm. Ramey's tract; thence with his lines N. 65 deg. W. $14\frac{1}{2}$ rods to a stake, N. $70\frac{1}{2}$ deg. W. 20 rods to a stake one of the original corners on the W. side of the tract, a hickory five inches in diameter bears N. $23\frac{1}{2}$ deg. E. 17 links, a pine eight inches in diameter bears N. 52 deg. W. 16 links; thence with the old line on the ridge (the line not being resurveyed); N. 10 deg. W. 10 poles down the ridge to a stake and hickory on top of the ridge; N. 17 deg. E. $15\frac{36}{100}$ poles to a stake on top of the ridge, N. 3 deg. $30'$ W. $27\frac{76}{100}$ poles to a stake on the ridge; N. 29 deg. E. 24 poles to a stake on the ridge; N. 63 deg. E. 26 poles to a stake on the ridge S. 86 deg. $36'$ E. $6\frac{76}{100}$ poles to a chestnut oak on top of the hill; one of the original corners and a corner to the tract of land containing 80 acres sold by William Yeager to William Moore by deed dated August 26, 1902; thence with the lines of said tract as surveyed by B. J. Billings of Adams County, Ohio; S. 4 deg. E. 4 poles to a double chestnut oak, S. 20 deg. E. 16 poles to a pine; S. 2 deg. E. 14 poles 20 links to a chestnut oak; S. $10\frac{1}{2}$ deg. E. 24 poles to a black oak; S. 11 deg. E. 16 poles to a double black oak; S. 27 deg. $30'$ E. 8 poles to a small black oak; S. 43 deg. E. 7 poles to a stone in Williamson's Run, Billings beginning corner; thence N. 23 deg. $45'$ E. 8 poles to a gum on the hillside; thence N. 38 deg. $45'$ E. 19 poles 22 links to a stake; N. 44 deg. $30'$ E. 16 poles to a black oak N. 42 deg. E. 19 poles, 12 links to a black oak N. 42 deg. $30'$ E. 14 poles to a pine N. $47\frac{1}{2}$ deg. E. 12 poles to a chestnut oak on top of high knob, the original corner being a pine; thence leaving Billing's line and following the old line of the ridge to the beginning, containing Eighty acres and being a part of Survey No. 15890, reserving, however, a right of way across premises along the Branch.

From an examination of the abstract submitted, I am of the opinion that Edward Cunningham has a good, merchantable, fee simple title to said lands subject to the following exceptions:

1. A mortgage by William Moore and his wife Sarah Moore to David A. Moore, dated November 14, 1905, recorded in Vol. 65 at page 338 of the Mortgage Records of Scioto County, given to secure the payment of \$50.00. The due date and other data relating to this mortgage and the obligation thereby secured are not stated in the abstract, so that I am unable to determine whether said mortgage and the record thereof has been quieted under and by virtue of the provisions of Section 8546-2, General Code, or whether said mortgage and the obligation thereby secured have been barred by the Statute of Limitations.

A release with respect to said mortgage should be obtained and recorded or sufficient data with respect to said mortgage and the obligation secured should be set out in the abstract to enable me to determine whether or not the same have been barred.

2. Under date of February 24, 1908, William Yeager conveyed the second tract by deed to Grover Moore. According to the abstract this deed does not state whether William Yeager was married or single. An affidavit should be supplied showing that William Yeager was not married at the time of the execution of this deed, if such be the fact, or if he was married at the time and his wife is still living, a quit claim deed from said wife should be obtained releasing her dower right to Mr. Cunningham, the owner of record of said tract.

3. It is also noted that in this deed from William Yeager to Grover Moore, the grantor reserved a right of way across said premises. A similar reservation is made in a deed executed by Orrin Moore and wife to Pearl I. Cook, May 24, 1921; and a like reservation is made in the deed from Pearl I. Cook and wife to Edward Cunningham under date of February 10, 1928. In this connection I notice that the proposed deed from Edward Cunningham and wife to the State of Ohio also reserves such right of way. This reservation of course, imposes a burden upon the land, but the manner in which this burden will effect the use that the State of Ohio expects to make of this land is a matter for your department to determine.

4. The abstract shows that a notation appears on the tax duplicate of Niles Township, Scioto County, for the year 1915, as follows: "February 28, 1916—transferred to Moore, Martin W., et al., by affidavit of inheritance." The abstracter notes that there is no affidavit of inheritance of record in Scioto County. This affidavit of inheritance by Martin Moore, et al., should be supplied and recorded.

5. The taxes for the last half of the year 1927, amounting to \$5.46 and due and payable in June, 1928, are unpaid and a lien.

There has been submitted to me a copy of a certification signed by the secretary of the Controlling Board showing the approval by said board of the purchase of the land herein under investigation from Edward Cunningham for the purchase price therein stated.

Encumbrance estimate No. 3381; dated February 20, 1928, covering the expenditure of the purchase price of these lands of Edward Cunningham and Carol Cunningham from the Division of Forestry, G-1 Lands account, has been submitted. It shows a sufficient balance in the account to cover the expenditure, but this fact has not been certified by the signature of the Director of Finance. The encumbrance estimate has been approved by the Director of the Department and by the Bursar. An encumbrance estimate should be submitted to the Director of Finance for his signature and when signed the same will be approved.

The deed for the above described tracts of land has been signed and acknowledged by Edward Cunningham and Carol Cunningham, his wife, under date of February 11, 1928, before a notary public of Scioto County and before two witnesses, and is otherwise in proper form.

Said abstract, certificate of Controlling Board, encumbrance estimate and deed, are herewith transmitted for your further attention. When the abstract has been corrected, the same together with the other files above enumerated should be returned to this department for approval.

Respectfully,
EDWARD C. TURNER,
Attorney General.