

1657.

APPROVAL, ABSTRACT OF TITLE TO LANDS IN THE CITY OF MANSFIELD, RICHLAND COUNTY, FOR ARMORY PURPOSES.

COLUMBUS, OHIO, February 2, 1928.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

Re: Lands in the City of Mansfield, which it is proposed to convey to the State of Ohio for armory purposes.

DEAR SIR:—On April 19, 1927, I rendered an opinion, being Opinion No. 346, in which I disapproved the title to a tract of 5.64 acres of land located in the City of Mansfield, which it is proposed to convey to the State of Ohio for armory purposes, for the reasons stated in said opinion.

Briefly stated, the reasons for disapproving the title, and the facts upon which the reasons were based, are as follows: On June 12, 1925, a receiver was appointed in the United States District Court for the Northern District of Ohio, Eastern Division, in case No. 1447, for the Roderick Lean Manufacturing Company, the then owner of the real estate, and on August 3, 1925, The Union Trust Company, as trustee under a trust indenture, filed a cross-bill in said case asking for the foreclosure of the trust indenture. On September 28, 1925, the court approved an entry finding the allegations of the bill of complaint and cross-bill to be true and ordering the receiver to accept an offer of the Roderick Lean Manufacturing Company of Indiana, Incorporated, to purchase the real estate and certain other assets of the Roderick Lean Manufacturing Company for the sum of three hundred and eighty thousand (\$380,000.00) dollars in bonds of the Roderick Lean Manufacturing Company of Indiana, Incorporated, and certain additional cash payments. The sale to the Roderick Lean Manufacturing Company of Indiana, Incorporated, was a private sale, and, in so far as the real estate involved is concerned, was in my opinion void, inasmuch as Sections 1640 and 1642 U. S. Comp. Stat. of 1916 (27 Stat. 751; Act of March 3, 1893, c225, Sections 1 and 3) require all sales of real estate, under order or decree of any United States Court, to be made at public sale after four weeks newspaper advertisement.

Recently, however, I was furnished with certain additional papers, to-wit, certified copies of the offer of the Roderick Lean Manufacturing Company of Indiana, Incorporated, and the order of the court directing the receiver to give notice of said offer to The Union Trust Company, as trustee, and to the creditors and stockholders of the defendant, and fixing September 28, 1925, as the date for filing objections to the sale; affidavits showing a list of the creditors of the defendant, the Roderick Lean Manufacturing Company, and showing that a copy of the offer of the Roderick Lean Manufacturing Company of Indiana, Incorporated, was mailed to each of the creditors and stockholders of the defendant, and it appears that no one appeared at the hearing and offered any objections to the sale. It further appears that no objections have since been made by any creditor, bondholder or stockholder of the defendant, the Roderick Lean Manufacturing Company.

While I am not of the opinion that failure on the part of the bondholders, creditors and stockholders to object to the sale, either at the time of sale or thereafter, has the effect of curing the defect, I do feel that in view of the fact that none of the bondholders, creditors or stockholders objected to the sale at the time it was made, and in view of the further fact that they have stood by for

almost two and one-half years without making any objection, during which time the real estate has been mortgaged to The Union Trust Company of Cleveland to secure an issue of \$380,000.00 of bonds, such creditors, bondholders and stockholders would probably be estopped from setting up any claim to the property in the future.

In view of all the circumstances, while I am not of the opinion that the City of Mansfield has a clear title to the real estate in question, I am of the opinion that there is no serious objection to the conveyance of the real estate in question to the state for armory purposes.

I am returning the abstract of title, together with all other papers submitted in this connection, to you herewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1658.

VILLAGE—EMPLOYMENT OF LEGAL COUNSEL—CERTIFICATE OF FISCAL OFFICER.

SYLLABUS:

1. *A contract entered into by a village for the employment of legal counsel at a definite amount per year for all services, requires a certificate of the fiscal officer that funds are in the treasury or in process of collection and properly appropriated for the purpose.*

2. *Where a contract between a village and an attorney provides for a definite salary for ordinary services and makes further provision for extra allowances in sums to be fixed by council for extraordinary services, no certificate of the fiscal officer is required as to the additional services until, pursuant to said contract, a supplemental agreement is entered into providing for a definite amount for such extra services.*

3. *Paragraphs 1 and 2 of this syllabus do not apply where the position of village solicitor is created by ordinance, and the necessity of a fiscal officer's certificate under such circumstances is not passed upon.*

COLUMBUS, OHIO, February 2, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication, as follows:

“Section 4220, General Code, reads:

‘When it deems it necessary, the village council may provide legal counsel for the village, or any department or official thereof, for a period not to exceed two years, and provide compensation therefor.’

The first branch of the syllabus of Opinion No. 2100, page 435, Opinions for 1921, reads: