

125.

APPROVAL—ABSTRACT OF TITLE TO LAND IN JOHNSON  
TOWNSHIP, CHAMPAIGN COUNTY, OHIO.

COLUMBUS, OHIO, February 11, 1937.

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

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 19 and other files relating to the proposed purchase by the Conservation Council in the name of the State of a tract of land which is owned of record by Hallet L. Hunt and others in Johnson Township, Champaign County, Ohio, and which is more particularly described by metes and bounds as follows:

Beginning at a concrete monument which is N. 0 53' W., 119.46 feet from the S. W. corner of the S. E.  $\frac{1}{4}$  of section 22 in Johnson Township, Champaign County, Ohio, T. 3 E., R. 12 N., said corner of  $\frac{1}{4}$  section is in the center of the township road; thence N. 0° 53' W., 195.0 feet to the common corner of the H. L. Hunt, W. F. & F. E. Pence and Ella Frank farms; thence N. 1° 28' W., 1339.69 feet to a corner which is the common corner of H. L. Hunt and Ella Frank and J. W. Lichlider and also the center of section 22; thence N. 89° 51' E., 525.93 feet with the north line of the S. E.  $\frac{1}{4}$  of section 22 to the center of Mosquito Creek; thence with the center of the creek S. 62° 35' E., 324.11 feet; thence S. 5° 32' W., 1392.0 feet to a concrete monument; thence S. 89° 56' W., 642.08 feet to the place of beginning containing 24.50 acres, more or less. This tract is the north part of the 40 acres, more or less, that was deeded to Hallet L. Hunt by W. F. and Myrtle Runkle and recorded in Deed Book, No. 100, Page 348, Champaign County Recorders Office. As per new survey by Ohio Department of Conservation.

Upon examination of the abstract of title submitted to me, I find that Hallet L. Hunt has a good merchantable fee simple title to an undivided one-half interest in said property, subject to the inchoate dower interest of his present wife, Della Hunt, and that Mertie Moore, Raymond Hunt, Iva Kizer, Ova Redinbo, Vearl Hunt and John Hunt each have a good merchantable fee simple title in and to an undivided one-

twelfth interest in said premises subject to the consummate dower interest of Hallet L. Hunt as surviving spouse of Anna Hunt from whom the persons above named, other than Hallet L. Hunt, derived their title to this property, and subject to the respective inchoate dower interest of the spouses of such persons named who are now married. I further find upon examination of this abstract that Hallet L. Hunt and the other persons above named as tenants in common in and of the above described tract of land have a good and indefeasible title to the property free and clear of all liens and encumbrances except perhaps certain taxes on this property which are now due and payable. As to this, it is stated in the abstracter's certificate that "there are no overdue taxes, which are a lien against said premises, except taxes due in June, 1934, which taxes are now due and payable." In this connection, it further appears, however, that both installments of the 1936 taxes, each amounting to the sum of \$9.35, were paid on December 31, 1936. In this situation, it is suggested that a check be made in the office of the Treasurer of said county as to the taxes on this property, and that if any such are now found to exist, arrangements be made for payment of the same before the transaction for the payment of this property is closed by your department by the issuance of voucher covering the purchase price of the property.

In addition to the exception above noted with respect to the small amount of taxes on this property which may be due and unpaid and which in any event if existing is a lien upon the property, it is noted that under date of July 31, 1936, Hallet L. Hunt executed a certain instrument with the formalities of a deed in and by which he granted to Pioneer Rural Electric Cooperative, Inc., a right of way for the construction and maintenance of electric lines consisting of conduits, cables, poles, wires and other distributing appliances, under and across the real estate here in question along a route which is described in the instrument as follows, to wit:

"Along the North side of 61 road as now or hereafter located within one foot of the highway limit and or not more than one foot of the highway limit."

There is further provision in the instrument that full force and effect shall be given to the easement thereby granted provided that construction of such electric line shall begin on or before the first day of November, 1936. The easement granted by this instrument covers only the undivided interest of Hallet L. Hunt in the property and as to the other tenants in common of the property above named said company, if the same has entered in and upon the property for the purpose above

stated, may be a trespasser or at best a more licensee. There is nothing in the abstract to show what, if anything, has been done by said company in the matter of constructing an electric line pursuant to the easement granted by this instrument and in the absence of adequate maps or plats I am unable to determine the location of this electric line, if the same has been constructed, with respect to the tract of land which the Conservation Council is purchasing for and in the name of the State; and much less am I able to determine from the files submitted how and to what extent such electric line will interfere with or otherwise affect the use which your division desires to make of this property in connection with the so-called Kizer Lake improvement.

Upon examination of the warranty deed tendered by the above named grantors, to wit, Hallet L. Hunt, Raymond Hunt, Mertie Moore, Iva Kizer, Ova Redinbo, Vearl Hunt and John Hunt, I find that said deed has been properly executed and acknowledged by said grantors and by the respective spouses of such of said grantors as are married, and that the form of this deed is such that the same is legally sufficient to convey the above described property to the State of Ohio by fee simple title with a covenant that the property thereby conveyed is free and clear of all encumbrances whatsoever.

Upon examination of the contract encumbrance record No. 19, which has been submitted as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance in the appropriation account to the credit of your department to cover the purchase price of this property, which purchase price is the sum of \$2963.16. It further appears from a recital contained in said contract encumbrance record, as well as from a copy of a certificate over the signature of the President of the Controlling Board, that said Board under date of November 5, 1936, approved the purchase of this property and released from the appropriation account the money necessary to pay the purchase price of the property.

I note, in conclusion, that the purchase of this property has been authorized and provided for by proper resolution of the Conservation Council duly adopted under date of June 24, 1936, which action was taken pursuant to the authority of section 472, General Code, which provides, among other things, that the Conservation Council may, subject to the approval of the Attorney General, acquire by gift or by purchase on behalf of the State such real property as may be necessary in its judgment for new public parks, resorts and reservoirs, dams, landings, wharves and other improvements. Inasmuch as by this section of the General Code the purchase of this property requires the approval of the Attorney General, I am hereby approving such purchase as is

evidenced by my approval endorsed upon the deed. Subject only to the exceptions above noted, I am approving the abstract of title submitted to me in connection with the purchase of this property and the same, together with the warranty deed, contract encumbrance record and other files, all of which are hereby approved, are herewith returned to you to the end that the transaction relating to the purchase of this property may be closed by you.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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126.

CONSERVATION COUNCIL—AUTHORITY—STREAM, RIVER  
OR LAKE POLLUTION.

*SYLLABUS:*

*Under the provisions of Section 1438-1, General Code, the Conservation Council has no authority, right or privilege in the prosecution of stream, river and lake pollution cases.*

COLUMBUS, OHIO, February 15, 1937.

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

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“The matter of stream, river and lake pollution is one that is rapidly becoming a very vital factor in the operation of the Division of Conservation, and we respectfully ask your opinion as to what authority, right and privilege the Division has in the prosecution of pollution cases.”

Section 1438-1 of the General Code, reads as follows:

“The conservation council shall have authority and control in all matters pertaining to the protection, preservation and propagation of song and insectivorous and game birds, wild animals and fish, except authority to change laws in the General Code covering commercial fishing in the Lake Erie fishing district, and in such other waters wherein fishing with nets is licensed by law,