

may be served, which agent was at the same time a resident of New York City. The paragraph of Section 8623-129, providing a fee of one dollar to be charged for subsequent appointments of agents refers to "any person so appointed as agent." It is my opinion that this provision is only applicable to agents of corporations organized under the General Corporation Act of the State of Ohio.

In view of the foregoing, it necessarily follows that the only provision relative to the fee to be charged for filing subsequent appointments of statutory agents of foreign corporations as required by Section 181, General Code, is contained in paragraph 9 of Section 176, General Code, quoted above.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

751.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
 FRANKLIN, HAMILTON AND STARK COUNTIES.

COLUMBUS, OHIO, August 16, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

752.

DISAPPROVAL, ABSTRACTS OF TITLE TO LANDS OF KATHERINE
 W. KOHL, ET AL., IN THE CITY OF XENIA, GREENE COUNTY.

COLUMBUS, OHIO, August 16, 1929.

HON. A. W. REYNOLDS, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval abstract of title to Block No. 7, Dodds' Second Addition to the city of Xenia, Ohio, and the several lots into which said block is divided.

Block No. 7 of said addition consists of twelve lots, numbered from one to twelve, inclusive. Of these lots, Lot No. 1 is owned of record by one Katherine W. Kohl, Lot No. 2 by one Adolph Moser, Lot No. 3 by one Carrie Snyder, Lot No. 4 by James J. Curlett, Lot No. 6 by Eugene Curlett and Eleanor F. Curlett, Lot No. 12 by Arthur C. McCormick and F. Leon Spahr, and the balance of said lots in Block No. 7 are owned of record by William Kauffman and Kate Kauffman, as executors of the estate of Diana Roberts, deceased.

Upon examination of the abstract of title submitted, I find that the above named persons own the several lots standing of record in their respective names by fee

simple title, subject to the following exceptions affecting all or a part of the lots here under investigation:

1. In and prior to 1864 a large acreage of land, including the property here under investigation, was owned by Silas Roberts. Said Silas Roberts died in July, 1864, intestate, and the property, by operation of law, descended to seven children and eight grand-children, the grand-children being children of one Prudence Ewing, a daughter of Silas Roberts who died before he did. Each of said grand-children took therefore a one-sixty-fourth (1/64) interest in the property of which the said Silas Roberts died seized. There is nothing in the abstract to show that the interests of Samuel Ewing and James Ewing, children of Prudence Ewing, ever came into the subsequent chain of title shown by the abstract, or that said interests were ever relinquished. The abstract shows a deed in which James Ewing and Samuel Ewing joined with their sister, Alice Ewing, in conveying to Emmazetta Roberts all of the right, title and interest in lands which came to them by descent upon the death of their uncle, John Roberts, who died some time after the death of Silas Roberts, his father. From this it may be inferred that when said deed was executed by James Ewing and Samuel Ewing, they were both of full age; if this be true, the time has long since lapsed within which they could assert any right, title or interest in this property or any part thereof. If, however, there is any information obtainable that will clear the record as to the respective interests of James Ewing and Samuel Ewing in the tract of land which includes this whole addition, such information should, of course, be secured and made a part of the abstract.

2. It appears that prior to the death of Louisa R. Lackey, which occurred some time prior to the 23rd day of April, 1910, she was a tenant in common with Diana Roberts of the whole of the tract of land, including that in which this addition was laid out. Louisa R. Lackey was a daughter of Silas Roberts, and it is quite certain that some time during her life she was married to a man whose surname was Lackey. There is nothing in the abstract to show that the husband of Louisa R. Lackey is dead, or that his dower interest in the property of Louisa R. Lackey was in any way relinquished or barred.

3. It appears from the abstract that upon the death of Diana Roberts, who died seized of the fee simple title of the 569 acre tract, including the property here under investigation, the said property became vested in William Kauffman and Kate Kauffman, under the last will and testament of said Diana Roberts, for the purposes of the trust provided for in said will; that having power under the will to sell said real estate, or any part thereof, said William Kauffman and Kate Kauffman, as executors, on April 15, 1920, conveyed the whole of this tract of land to one Frank W. Dodds, and at said time took back from him a mortgage upon the whole of the land conveyed. Thereafter the said Frank W. Dodds laid out the addition which includes the lots here under investigation. On June 17, 1920, Frank W. Dodds sold lot No. 1 in Block No. 7 to Katherine W. Kohl, who is now the record owner of the same. On the 17th day of May, 1922, said Frank W. Dodds sold and conveyed lot No. 2 in Block No. 7 to one Lilla M. Brettney, which lot is now owned of record by Adolph Moser. On August 9, 1920, lot No. 3 in Block No. 7 was sold to one Julia Whittington, which lot is now owned of record by Carrie Snyder, and on April 30, 1921, said Frank W. Dodds sold and conveyed lot No. 12 in Block No. 7 to Arthur C. McCormick and F. Leon Spahr. Thereafter on the 9th day of April, 1926, Frank W. Dodds, for the purpose of compromising and settling the mortgage claim held against him by William Kauffman and Kate Kauffman, as executors of the last will and testament of Diana Roberts, deceased, executed a quit-claim deed to said William Kauffman and Kate Kauffman as executors of the last will and testament of Diana Roberts, deceased, reconveying to them all of said tract of 569 acres, excepting therefrom all lots, pieces, and parcels of land theretofore conveyed by said Frank W. Dodds and "not

now subject to a lien of a certain blanket mortgage heretofore given by said grantor and wife to said grantees as such executors, said mortgage being dated April 15, 1920, and recorded with Mortgage Records of Greene County, Ohio in Vol. 84, page 266." Inasmuch as said lots Nos. 1, 2, 3 and 12 in Block No. 7 were conveyed by said Frank W. Dodds after the execution by him of the blanket mortgage to William Kauffman and Kate Kauffman, as executors of said Diana Roberts, deceased, each and all of said lots are now held by the present owners subject to the lien of said mortgage, unless said lots have in some way been released from the operation of the same. There is nothing in the abstract to show any such release, and on the abstract submitted it appears that the four lots now held by said Katherine W. Kohl, Adolph Moser, Carrie Snyder and Arthur C. McCormick and F. Leon Spahr, respectively, are subject to the lien of said blanket mortgage, the amount of which mortgage is not stated in the abstract.

In addition to the foregoing, it appears that lot No. 1 in Block No. 7, is subject to the lien of a mortgage in the sum of \$133.00 executed by Katherine W. Kohl and John E. Kohl, her husband, to Frank W. Dodds, which mortgage has been assigned and transferred to William Kauffman and Kate Kauffman, as executors of the estate of Diana Roberts, deceased.

There is nothing in the abstract to show a formal release of the blanket mortgage executed by Frank W. Dodds and wife to William Kauffman and Kate Kauffman, as executors of the estate of Diana Roberts, deceased, after the unsold land covered by said mortgage was reconveyed to said executors, but as to such lots and lands it would seem that the mortgage became merged and lost in the larger fee simple title by which said executors hold said lots and lands after the reconveyance of the same to them by said Frank W. Dodds and wife. In this view, it appears that lot No. 4 held by James J. Curlett and lot No. 6 held by Eugene Curlett and Eleanor F. Curlett are owned and held by said persons free and clear of said blanket mortgage.

Applicable to all of the matters discussed in this exception, it is observed that if a formal release of said blanket mortgage was entered of record when said executors again obtained title to the unsold lands in said addition by reconveyance from Frank W. Dodds and wife, such release and the terms and conditions of the same should be set out in the abstract.

4. From the abstract it appears that all of the 1928 taxes upon the several lots in Block No. 7 of this addition have been paid, with the following exceptions noted in the abstract:

Lot No. 1 owned by Katherine W. Kohl, \$2.25 unpaid;

Lot No. 4 owned by James J. Curlett, .90 unpaid;

Lot No. 6 owned by Eugene and Eleanor F. Curlett, .90 unpaid.

The undetermined taxes for the year 1929 are, of course, a lien upon each and all of the lots here under investigation.

For the reasons above stated, I am unable to approve the title to the lots in Block No. 7 of Dodds' Second Addition to the City of Xenia, Ohio, on the abstract submitted, and I am herewith enclosing said abstract with the request that the same be returned to the abstracter for correction with respect to the matters above indicated. In this connection, I assume that it is understood that the title to each and all of the lots in Block No. 7 is to be secured by the City of Xenia by proper conveyances from the present owners of record, and the City of Xenia is then to convey said lots to the State of Ohio, free and clear of all incumbrances whatsoever.

Before the abstract of title to these lots is again submitted to this department for examination and approval, it is suggested that the City of Xenia do whatever is necessary in order to obtain a good and indefeasible title to said lots and then take up

and carry out the legislative and administrative proceedings necessary to the conveyance of these lots to the State of Ohio, all of which proceedings together with the corrections in the abstract herein required should be set out in the abstract and made a part thereof; which abstract together with a properly executed deed of the City of Xenia should be again submitted to this department.

Respectfully,
GILBERT BETTMAN,
Attorney General.

753.

ROAD MACHINERY—CIRCUMSTANCES UNDER WHICH TOWNSHIP TRUSTEES AND MUNICIPALITY MAY RENT SAME DISCUSSED—WHAT FUNDS SHOULD BE USED.

SYLLABUS:

1. *Under the provisions of Section 3373 of the General Code of Ohio, township trustees may purchase or rent road machinery equipment, whether used or new, for the purpose of maintaining or repairing roads and culverts within the township, when such contract is made in good faith and the rentals to be paid thereunder are reasonable. In the payment of obligations under such contracts, the proceeds of the gasoline tax may not be used, but such payments should be made from the so-called township road fund.*

2. *Municipal corporations may purchase or rent such machinery and equipment for the purpose of maintaining and repairing their streets and the funds arising under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code may be used for such purpose. The funds arising under Sections 6309-2 and 5537 may not be expended to purchase or rent equipment for construction purposes alone. Whether the funds arising under Section 5541-8 may be expended for the purpose of purchasing or renting machinery for construction purposes alone is not decided.*

3. *A municipality or township may not use such procedure to circumvent the law by making a contract of sale under the guise of a lease. In all such contracts, where the agreement is a contract of purchase rather than a contract of lease, the law requires competitive bidding when the amount involved is in excess of five hundred dollars.*

COLUMBUS, OHIO, August 16, 1929.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion upon a question propounded in a communication to you by a road machinery and equipment company, which is as follows :

“Is it permissible for a township or municipality to rent machinery or equipment used or new to maintain or reconstruct township roads or village streets?

It would seem to the writer that this would be comparable to hiring labor and would be within the legal limits of the law.

We have been very careful thus far in advising our salesmen as to when they might pass on to the different boards of trustees in townships as to this application. However a good many of the boards seem to think that