that the child in question, has a "legal school residence" in Crane Township, Paulding County, and that inasmuch as Crane Township does not maintain a high school and he is attending high school in Mark Township, Defiance County, the said Crane Township is legally liable to Mark Township for tuition for the said child.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3221.

APPROVAL, ABSTRACT OF TITLE TO LAND OF LUCIUS J. OTIS, ET AL., IN MIFFLIN TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, May 13, 1931.

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

DEAR SIR:—I have in hand your letter, submitting for my examination and approval, an abstract of title, copy of real estate option, deed, encumbrance estimate No. 1776, authority of the Controlling Board, plat, and tax receipts for the years 1929 and 1930, relating to the proposed purchase of 90 acres of land in Mifflin Township, Pike County, Ohio, from Lucius J. Otis, et al, said land being a part of Ohio State University Lot No. 20.

An examination of the abstract, certified under date of February 4, 1931, indicates that the fee simple title to this land is in the following persons who hold respectively the following undivided interests: Grace Otis Sage, a widow, an undivided one-sixth interest; Winnifred Otis Hine, an undivided one-sixth interest; Lucius J. Otis, a bachelor, an undivided three-twelfths interest; Lucius J. Otis, as trustee under the will of Margaretta E. Otis, deceased, an undivided one-sixth interest; and the trustees (whose identity will later be discussed) under the will of Charles T. Otis, deceased, an undivided three-twelfths interest.

I come now to a discussion of the trustees under the will of Charles T. Otis. Said testator, in the eighth clause of his will (p. 27 abstract), appointed Margaretta E. Otis, his sister, and Lucius J. Otis, his brother, to act as trustees. The eleventh clause of said will (p. 30 abstract) provides:

> "In the case of the death, resignation, inability or refusal to act of either of said Margaretta E. Otis or Lucius E. Otis, either as executor, executrix or trustee, then I nominate and appoint the Northern Trust Co., of Chicago, Ill., as co-executor or trustee with the remaining executor, executrix or trustee, as the case may be. In case of the death, resignation, inability or refusal to act of both of said Margaretta E. Otis and Lucius J. Otis, as executrix and executor respectively, or as trustees hereunder, then the Northern Trust of Chicago, Ill., shall act as sole executor or trustee hereunder with the same powers and duties as above provided in favor of the said Margaretta E. Otis and Lucius J. Otis; in case of the resignation or refusal of the Northern Trust Co. to act as

executor or as successor in trust under the foregoing provisions, then I nominate and appoint the Chicago Title and Trust Co., as executor and as successor in trust with the same powers, privileges and duties as are herein vested in the said Margaretta E. Otis, Lucius J. Otis, as trustees and the Northern Trust Co., as successor in trust respectively."

Margaretta E. Otis subsequently died (p. 35 abstract). Lucius J. Otis, as the surviving trustee under the will of Charles T. Otis, deceased, now purports to convey the interest of said Charles T. Otis to the State of Ohio. From an examination of the above quoted eleventh clause of the will of said Charles T. Otis, it is apparent that the testator contemplated, in case of the death of his sister, Margaretta E. Otis, the appointment of the Northern Trust Company, of Chicago, Ill., as the co-trustee with the surviving trustee, and that, upon the refusal of the Northern Trust Company to act as a successor in trust, the Chicago Title and Trust Company should so act.

Section 10595, of the General Code of Ohio, provides:

"When two or more trustees are appointed by will, to execute a trust, and one or more of them dies, declines, resigns, or are removed, the survivors or remaining trustees or trustee may execute the trust, unless the terms of the will express a contrary intention."

From the circumstance that Lucius J. Otis, as surviving trustee under the will of Charles T. Otis, alone purports to convey said interest to the State of Ohio, it is inferable that both of the trust companies expressly named in said will, have declined to become trustees. Of course, they can not, against their own wishes, be compelled to become trustees, and if they have declined, it would not be necessary for them to join in the deed to the State of Ohio. However, if as a matter of fact, one of these companies has become a co-trustee along with Lucius J. Otis, it is necessary that such trust company become a party to the conveyance. If each of these trust companies has declined to, and neither has, become a co-trustee, it would be expedient to procure affidavits in proof of that fact.

The deed to the State of Ohio appears on four *separate* sheets of paper which are bound together by metal fasteners. The last two of these four separate sheets are given over *wholly* to the acknowledgments by the grantors. Section 8510 of the General Code, provides that the acknowledgment of a deed shall be certified "on the same sheet on which the instrument is written or printed." Under the statute just quoted, a deed for Ohio land, executed in Ohio, in the manner in which the present deed was executed, would be insufficient to convey a legal title. See Opinions of the Attorney General for 1927, Volume I, page 238. However, the deed in question was executed and acknowledged in the state of Illinois. Section 8516, General Code, provides:

"All deeds * * for the conveyance * * of lands * * situate within this state, executed and acknowledged, or proved, in any other state * * in conformity with the laws of such state * * or in conformity with the laws of this state, shall be as valid as if executed within this state, in conformity with the foregoing provisions of this chapter."

Unless it is expressly required by statute that the certificate of acknowledgment be written on the same sheet with the instrument acknowledged, such cer-

tificate may be written on a separate piece of paper and attached or appended to the instrument. 1 Corpus Juris, p. 828. An examination of the statutes of Illinois reveals that the Illinois law does not require an acknowledgment to appear upon the same sheet of paper with the instrument acknowledged; and hence, the acknowledgment of the deed in question is valid under the laws of Illinois. As a consequence of the deed's validity under the law of Illinois, where the instrument was executed, it is validated by the above quoted provisions of Section 8516 of the General Code.

The taxes for the year of 1930 have been fully paid, but the taxes for 1931 are now a lien upon this property. Said abstract reveals no further encumbrances.

Encumbrance estimate No. 1776 is in proper form, and shows that there remains in the proper appropriation account a sufficient balance to pay the purchase price of said land.

I am herewith returning to you all of the papers enumerated above as having been received.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3222.

CONVEYANCE OF LAND—BY GNADENHUTTEN HISTORICAL ASSOCIATION TO STATE OF OHIO—NECESSITY FOR ACCEPTANCE BY LEGISLATURE—ACCEPTANCE BY AFFIRMATIVE PROVISION IN APPROPRIATION BILL VALID.

SYLLABUS:

A deed of conveyance executed to the State of Ohio by the Gnadenhutten Historical Association or other society holding the legal title to a parcel of land which is used as a site for a monument commemorating the memory of the Moravian Indians will not be effective to vest the title of said property in the State of Ohio without action of the legislature accepting such conveyance. Such acceptance by the state may be effected, however, by a provision therefor in an appropriation act making an appropriation to such association or society in connection with the use of said property for the purposes for which the same has been dedicated.

COLUMBUS, OHIO, May 13, 1931.

HON. WALTER G. NICKELS, *State Senator, 89th General Assembly, New Philadelphia, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication in which you state that the Gnadenhutten Historical Association holds the legal title to a parcel of land which is used as a site for a monument commemorating the memory of a number of Christian Indians who at an early date in the history of this state were massacred at or near said site, and that said association desires to convey the title of said land to the State of Ohio.