

1657.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA  
COUNTY, OHIO, \$14,000.00.

COLUMBUS, OHIO, December 21, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN:

RE: Bonds of City of Cleveland, Cuyahoga County,  
Ohio, \$14,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated September 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of September 17, 1937, being Opinion No. 1173.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

1658.

APPROVAL—CERTIFICATE OF TITLE, DEED, ETC., RELAT-  
ING TO THE CONVEYANCE TO THE STATE OF OHIO OF  
TWO PARCELS OF LAND FOR USE AS AN ARMORY IN  
THE CITY OF LAKEWOOD, OHIO.

COLUMBUS, OHIO, December 21, 1937.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination a certificate of title, deed, and other files relating to the proposed conveyance to the State of Ohio, for armory purposes, of two certain parcels of land now owned by the city of Lakewood, Ohio, which parcels are more particularly described as follows:

PARCEL NO. 1. Situated in the City of Lakewood, County of Cuyahoga and State of Ohio and known as being part of original Rockport Township Section No. 23, bounded and described as follows:

Beginning at the northeasterly corner of Sublot No. 24 in the Wayne Avenue subdivision of part of original Rockport Township Section No. 23, as shown by the recorded plat in Volume 30 of Maps, page 13 of Cuyahoga County records; said place of beginning being also 195.53 feet distant southerly measured along the easterly line of said subdivision from the southeasterly line of Detroit Avenue (66 feet wide); thence continuing southerly along the easterly line of sublots Nos. 24 to 42, both inclusive, 760.13 feet to the northwesterly corner of Sublot No. 52 in the John Nahius subdivision of part of original Rockport Township Section No. 23, as shown by the recorded plat in Volume 30 of Maps, page 6 of Cuyahoga County records; thence northeasterly along the northwesterly line of said subplot No. 52, 137.36 feet to the westerly line of subplot No. 53 in said last mentioned subdivision at a point in said westerly line 29.39 feet northerly from the southwesterly corner of said subplot No. 53; thence northerly along the westerly lines of sublots Nos. 53 to 71, both inclusive, 730.61 feet to the northwesterly corner of said subplot No. 71; thence westerly in a direct line about 132 feet to the place of beginning, be the same more or less but subject to all legal highways.

PARCEL NO. 2. Situated in the city of Lakewood, County of Cuyahoga and State of Ohio and known as being subplot No. 29 in The Wayne Avenue Subdivision of part of original Rockport Township Section No. 23, as shown by the recorded plat in Volume 30 of Maps, page 13 of Cuyahoga County records, and being 40 feet front on the easterly side of Wayne Avenue, and extending back of equal width 115 feet, as appears by said plat, be the same more or less but subject to all legal highways.

Upon examination of the certificate of title of the above described parcels of land, submitted to me, which certificate of title is executed by The Cuyahoga Abstract Title and Trust Company under date of August 25, 1937, I find that as of said date the city of Lakewood had a good and indefeasible fee simple title to the above described real property and that it owned and held the same free and clear of all encumbrances except the taxes on this property for the last half of the year 1936, amounting to \$235.12 as to the first parcel of land above described, and

amounting to \$12.98 on the second parcel of land herein described. I assume from the fact that taxes have been assessed against this property that the same, although owned by the city of Lakewood, has not been used for public purposes; and in this view, taxes for the year 1937 would accrue against this property even though the property was owned by the city of Lakewood at the time the lien for these taxes attached. On the other hand, it may be that this property was acquired by the city of Lakewood after the lien for the taxes on the property became a lien upon the property. In any event, it appears from the certificate of title that the taxes for the last half of the year 1936 in the respective amounts above stated and the taxes for the year 1937 are a lien upon this property. Some adjustment with respect to these taxes should, of course, be made before the transaction is closed for the acquisition of the property; although, as to this, I assume, the lien for these taxes, which is that of the State itself, would become merged and lost upon the acquisition of this property by the State in and by the acceptance of the deed of the city of Lakewood above referred to.

In this connection, it is noted that in one of the deeds in the chain of title to the second parcel of land above described, to wit, in the deed from S. Colahan and Lizzie Colahan, husband and wife, by S. Colahan, attorney in fact, to one Effie Woodbury, dated November 30, 1903, there is a building restriction in words and figures as follows, to wit:

“It is further agreed by said Grantee, her heirs, administrators and assigns in accepting this deed that no building shall be erected on the above described premises except for resident (residence) purposes, nor shall such buildings cost less than (\$2000.00), nor shall any building be placed within 25 feet of the street line.”

With respect to this restriction in its application to the State of Ohio as the grantee in the deed executed by the city of Lakewood, I am advised that the State does not expect to use this parcel of land for building purposes but that this property is to be used as a means of access to the armory building which is to be constructed wholly upon the first parcel of land above described. Moreover, it may be further observed in this connection that since this parcel of land is now owned by the city of Lakewood, an agency, so to speak, of the State, which is vested with the power of eminent domain for the appropriation of property for public purposes, this building restriction is without effect as against the city of Lakewood; and, a fortiori, such building restriction will be ineffective as against the state of Ohio upon its acquisition of the property for the purposes above stated. *Doan vs. Cleveland Short Line Railway Com-*

*pany*, 92 O. S., 461; *Norfolk and Western Railroad Company vs. Gale*, 119 O. S., 110, 113.

The title to the above described property in the city of Lakewood, Ohio, is, therefore, hereby approved, subject only to the exception above noted with respect to the taxes thereon.

The deed above referred to is one executed by the city of Lakewood by the hands of its Mayor and Clerk pursuant to the authority of an ordinance of the Council of said city duly enacted under date of December 6, 1937, conveying the above described property to the state of Ohio as the named grantee therein. This deed is executed under the authority of Section 3631, General Code, which, among other things, authorizes and empowers municipal corporations to acquire real estate and to donate the same by deed in fee simple to the state of Ohio as a site for the erection of an armory. With respect to the authority of the city of Lakewood to convey this property to the state of Ohio for armory purposes, Section 3631, General Code, should be read in connection with Section 5239, General Code, by which the Adjutant General is authorized to receive donations of land for armory or other military building purposes subject to the provision that all lands so acquired shall be deeded to the state of Ohio.

Upon examination of this deed, I find that the same has been executed and acknowledged by the authorized officers of said city in the manner provided by law 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 for the purpose above stated.

Inasmuch as this property is being donated to the State of Ohio by the city of Lakewood, no action by the Director of Finance or by the Controlling Board was or is necessary in connection with the acquisition of this property by the State. And I am, therefore, returning said certificate of title, deed and other files for your further attention in closing the transaction for the acquisition of the above described property for the purpose above stated.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*