

issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of September 26, 1935, being Opinion No. 4716.

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

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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APPROVAL—WARRANTY DEED, CONTRACT ENCUMBRANCE RECORD, CERTIFICATE OF TITLE, ETC. EXECUTED BY THE NORTHERN OHIO GUARANTEE TITLE COMPANY OF AKRON, OHIO, RELATING TO CERTAIN LANDS IN GREEN TOWNSHIP, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, May 15, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval certificate of title No. 56,889 executed by The Northern Ohio Guarantee Title Company of Akron, Ohio, under date of February 27, 1937, warranty deed and contract encumbrance record No. 29, relating to the proposed purchase by the State of Ohio for the use of your department in the construction of the Nimisila Creek Basin Reservoir, of a tract of land in Green Township, Summit County, Ohio, and being more particularly described as being a part of the southwest quarter of Section 19 in said township,

Beginning at an iron pin set in the center line of South Main Street Road and on the northwest corner of the southwest quarter of Section No. 19; thence S. 83° 11' 40" E. along the north line of the said southwest quarter section eight hundred twenty and no hundredths (820.00) feet to the west line of the old C. M. & A. R. R. right-of-way now owned by the East Ohio Gas Company; thence S. 2 deg. 40' 29" W. along the west line of said right-of-way five hundred twenty-one and thirty-five hundredths (521.35) feet to a stake; thence N. 83 deg.

11' 40" W. eight hundred fifty-eight and sixty-four hundredths (858.64) feet to the center line of South Main Street Road and the west line of Section No. 19; thence N. 6 deg. 55' 30" E. along the center line of South Main Street Road and the west line of Section No. 19 five hundred twenty and no hundredths (520.00) feet to the place of beginning and containing ten and two hundredths (10.02) acres of land as surveyed June 5, 1936, by Francis Stafford.

Upon examination of the certificate of title submitted to me, I find that Kirk P. Haskins and Ester B. Haskins, the owners of record of the above described tract of land, have a good and indefeasible fee simple title to this property, and they own and hold the same free and clear of all liens and other encumbrances except those following which are here noted as exceptions to the title in and by which Kirk P. Haskins and Ester B. Haskins own and hold this property:

1. Under date of August 13, 1924, Nelson H. Carmany and Elta M. Carmany, who then owned and held a larger tract of 112 acres of land in said township and section, which included the ten-acre tract of land here in question, executed an oil and gas lease to The East Ohio Gas Company covering the whole of said 112-acre tract of land. This lease is for a term of twenty years and for so much longer as oil and gas or either is found in paying quantities on said premises. It does not appear from this certificate of title or from any other information which I have at hand what, if any, developments for oil and gas or either have been made under this lease or how such developments, if any, have affected the ten-acre tract of land here in question. Doubtless, you or your representatives in the field in connection with the work of the Nimisila Reservoir project are advised with respect to this lease and to the development thereunder so far as the same affect the tract of land hereinabove described. It is sufficient for my purpose to note that this oil and gas lease has not been released or otherwise canceled of record and that the same constitutes an encumbrance upon this property.

2. On December 2, 1931, Kirk P. Haskins and Ester B. Haskins, then as now the owners of this ten-acre tract of land, executed an instrument in deed form in and by which they granted to The Ohio Bell Telephone Company an easement or right of way in and over the above described tract of land or a part of the same for the construction of a telephone or telegraph line, said line or lines to be constructed along the east side of South Main Street Extension and on a line to be determined by the Department of Highways. It does not appear from this certificate of title or from any other information available to me whether any telephone or telegraph lines were constructed by The Ohio Bell Tele-

phone Company pursuant to the grant to it of this easement; and, of course, I am not advised as to how such telephone or telegraph lines, if any, will affect the use which you desire to make of this property in connection with said reservoir improvement. It is sufficient to note that in a limited way the same is an encumbrance.

3. It appears from the certificate of title that the taxes on this property for the year 1936 are unpaid and are a lien thereon. In addition to this, it may be observed that the undetermined taxes for the year 1937 on the property are now a lien upon the property.

Subject only to the exceptions above noted, the title of Kirk P. Haskins and Ester B. Haskins in and to this property is hereby approved. The warranty deed which has been tendered to the State by Kirk P. Haskins and Ester B. Haskins has been properly executed and acknowledged by said grantors; and the form of the deed is such that the same is legally sufficient to convey the above described tract of land to the State of Ohio by fee simple title free and clear of the respective inchoate dower interests of Kirk P. Haskins and Ester B. Haskins therein, with a covenant of warranty that the property is conveyed to the State of Ohio free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 29 has been properly executed in the manner required by Section 2288-2, General Code, and the same shows a sufficient balance in the appropriation account to the credit of your department for the purchase of lands in connection with the Nimsila Creek Basin Reservoir project, to pay the purchase price of the above described property, which purchase price is the sum of \$6800.00.

The warranty deed above referred to and said contract encumbrance record are hereby approved. It further appears in this connection that the purchase of the above described and other lands required by your department in connection with this reservoir improvement, has been approved by the Controlling Board and that said Board by its order has released from the appropriation account to the credit of your department the money necessary to pay the purchase price of this property. I am herewith returning to you said certificate of title, warranty deed and contract encumbrance record to the end that proper voucher and warrant may be issued covering the purchase price of this property.

Respectfully,

HERBERT S. DUFFY,

Attorney General.