

3126.

APPROVAL, LEASE TO ABANDONED MIAMI AND ERIE CANAL PROPERTY IN THE VILLAGE OF FRANKLIN, BUTLER COUNTY.

COLUMBUS, OHIO, January 10, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt from your department of an indenture of lease executed in triplicate by the State of Ohio, through you as Superintendent of Public Works and as Director of said department, leasing and demising unto the village of Franklin, Warren County, Ohio, all that portion of the abandoned Miami and Erie Canal property located in the village of Franklin, and more particularly described as follows, to wit:

Being all that portion of the abandoned Miami and Erie Canal within the corporate limits of the village of Franklin, Warren County, Ohio, commencing at the north corporation line of said village at or near Station 10282 plus 64 of H. C. Baldwin's survey of the Miami and Erie Canal, south of Dayton, Ohio, made under the direction of the State Board of Public Works in 1912, and extending thence southward over and along said Miami and Erie Canal, including the full width of the bed and embankments thereof, a distance of 6436 feet, more or less, to Station 10347, said Station being approximately 600 feet south of the south line of Sixth Street in said village.

Said lease is executed under the authority of the Act of the General Assembly of the State of Ohio, passed March 25, 1925, 111 O. L. 208, the same being an act to abandon for canal purposes that portion of the Miami and Erie Canal between the Maumee River at Defiance, Defiance County, Ohio, and a point 500 feet north of the Middletown dam, near the corporation line of the City of Middletown, Butler County, Ohio, and to provide for the leasing of certain portions of the same to cities, villages and other political subdivisions of the State, and for the granting of leases outside of municipalities. An examination of the provisions of said lease discloses that said lease is in form in all respects, in conformity to the provisions of the Act of the General Assembly above referred to and not inconsistent with any other applicable provisions of the statutory law of this State relating to the lease of canal lands. Said lease is accordingly hereby approved by me, and such approval is evidenced by my signature to the triplicate copies of said lease.

Respectfully,

EDWARD C. TURNER,
Attorney General.

3127.

APPROVAL, ABSTRACT OF TITLE TO LAND OF FOREST E. ROBERTS, IN BENTON TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, January 12, 1929.

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

DEAR SIR:—There has been submitted for my examination and approval a cor-

rected abstract of title of a certain tract of 100 acres of land more or less, owned by one Forest E. Roberts, in Benton Township, Pike County, Ohio, which property is more fully described in Opinion No. 1941 of this department, addressed to you under date of April 6, 1928.

The legal title of said Forest E. Roberts to the land here in question, was the subject of discussion in said Opinion No. 1941 and in subsequent opinions addressed to you from time to time as other information was furnished and made a part of said abstract. In all of said opinions the legal title of Forest E. Roberts in and to said land was disapproved, and in Opinion No. 2612 addressed to you under date of September 22, 1928, you were advised that the records of your office with respect to the proposed purchase of this tract of land should be closed unless said Forest E. Roberts could obtain quit claim deeds from the person or persons holding the legal title to said lands, or unless he should obtain the legal title to said lands, in addition to his equitable title therein by proper proceedings to quiet his title to said tract of land.

The corrected abstract of title which has been submitted to me shows that on or about the fifteenth day of October, 1928, said Forest E. Roberts commenced an action in the Common Pleas Court of Pike County against A. J. Miller and the unknown heirs, devisees or assigns of A. J. Miller, for the purpose of quieting the title of plaintiff as against the claims of said A. J. Miller or other persons claiming under or through him. Said A. J. Miller, you will recall from the former opinions addressed to you on this title, was the legal owner in fee simple of said lands at the time the same were sold on tax title certificate to Charles H. Wiltzie through whose assigns said Forest E. Roberts obtained the equitable title to said lands.

An examination of the proceedings in said action of Forest E. Roberts to quiet his title in said lands shows that the same are in all respects regular. The judgment and decree of the court quieting the title of Forest E. Roberts to this property, made after proper service by publication upon A. J. Miller or those claiming under or through him, was entered on the journal of the court on December 10, 1928; and inasmuch as no appeal has been entered from said judgment and decree, and the time for effecting said appeal has now elapsed, I am of the opinion that full force and effect is required to be given to said proceedings and that said Forest E. Roberts has now a good and merchantable fee simple title to the tract of land here in question, subject only to the lien of the taxes on said land for the year 1928, the amount of which is not stated in the abstract, and with respect to which some adjustment should be made before this property is purchased and paid for.

An examination of the warranty deed of said Forest E. Roberts, conveying said tract of land to the State of Ohio, shows that the same has been signed and otherwise properly executed and acknowledged by said grantor and Gladys Roberts, his wife, who specifically releases all her right and expectancy of dower in said premises. It likewise appears that said deed is in form sufficient to convey to the State of Ohio a fee simple title to said tract of land, free and clear of all encumbrances. Encumbrance estimate No. 3383 relating to the purchase of said tract of land has been properly executed, and shows that there is a sufficient balance in the appropriation account to pay for said lands. It likewise appears from the certificate of the Secretary of the Controlling Board that the purchase of said lands has been approved by said board.

I am herewith returning to you said corrected abstract of title, warranty deed, encumbrance estimate and Controlling Board's certificate.

Respectfully,
EDWARD C. TURNER,
Attorney General.