

1570.

DISAPPROVAL—ABSTRACT OF TITLE, WARRANTY DEED
AND OTHER FILES RELATING TO THE PURCHASE OF
A PARCEL OF LAND IN CITY OF ATHENS, ATHENS
COUNTY, OHIO.

COLUMBUS, OHIO, December 1, 1937.

MR. GEORGE C. PARKS, *Treasurer, Ohio University, Athens, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, warranty deed and other files relating to the purchase of a parcel of real estate situated in the city of Athens, Athens County, Ohio, which, together with the conditions upon which this property is conveyed to the President and Trustees of Ohio University, is described and set out in the warranty deed tendered by Mae V. Bethel, the present owner of record of the property, as follows:

Thirty (30) feet off the east side of Inlot Number Sixty-two (62) in said City of Athens, subject to the terms and provisions of a certain contract entered into between Olivian B. Sloane, former owner, and Albert O. Sloane and Lavenia Sloane, as recorded in Volume 2, Page 159, of the Miscellaneous Records of Athens County, Ohio.

Upon examination of this abstract of title, which is certified by the abstracter under date of February 27, 1936, I find that Mae V. Bethel obtained her title to this property from one Olivian B. Sloane by deed under date of August 1, 1927. Olivian B. Sloane obtained title to the property from one Emma Grones Morse by warranty deed under date of April 14, 1885. Emma Grones Morse acquired her title to this property by mesne conveyance through one Jacob Lindley who acquired a perpetual leasehold title and interest in the whole of Lot No. 62 in the town of Athens, of which the property here in question is a part, from the President and Trustees of Ohio University who under date of June 27, 1814, executed to said Jacob Lindley a lease of said Lot No. 62 for a term of ninety-nine years from and after the first day of January, 1815, renewable forever. This lease was executed to Jacob Lindley and to his heirs and assigns for the term above stated, subject to the payment of an annual rental on the property leased of \$1.50.

It follows from what has been stated above that the only interest which Olivian B. Sloane acquired in the parcel of land here in question

as land was a perpetual leasehold interest therein, subject to the payment by him and by his heirs and assigns of a proportionate part of the ground rental reserved in the original lease to Jacob Lindley. And assuming, as I do, for the purpose of this opinion that no formal renewal of the ninety-nine-year lease under which Olivian B. Sloane owned and held this property at the time of the expiration of said lease on January 1, 1914, was necessary and that the continued payments by Olivian B. Sloane of the ground rent on this parcel of land and the acceptance thereof by the President and Trustees of Ohio University effected a renewal of said lease for an additional term of ninety-nine years from January 1, 1914, this was the interest and the only interest which he conveyed to Mae V. Bethel by his warranty deed executed and delivered to her under date of August 1, 1927.

In this connection, it appears from the abstract of title that under date of January 21, 1920, Olivian B. Sloane paid to the Treasurer of Ohio University such sum of money as being put at interest at six per cent. would yield the proper aliquot part attributable to the parcel of land here in question, of the amount of rent reserved in the original lease and in the constructive renewal thereof then owned and held by him with respect to this tract of land; and that at the same time the Treasurer of Ohio University issued to him a certificate of such payment as provided for in the Act of April 19, 1883, 80 O. L., 193. However, it does not appear from the abstract of title that at the time of the execution of this certificate or at any other time said Olivian B. Sloane received a deed of conveyance of the parcel of land here in question from Ohio University as a corporation or from the Governor, which deed, if received, would have conveyed to said Olivian B. Sloane an absolute fee simple title in and to this property.

However, finding, as I do, upon the information contained in this abstract of title, that the only right or title which Mae V. Bethel, as successor in title of Olivian B. Sloane, has in this property is a perpetual leasehold interest therein with an equitable right in her to require the execution and delivery to her of a deed for the property as provided for in said act, I am of the opinion that on any view of the questions above considered and discussed, upon the execution and delivery to the President and Trustees of Ohio University of the warranty deed of Mae V. Bethel, herein referred to, Ohio University, as a corporation represented by its President and Trustees, will have an absolute fee simple title to the above described parcel of land and to the privileges and appurtenances thereunto belonging.

As above noted, this property by the terms and provisions of the deed tendered by Mae V. Bethel is conveyed to the President and Trustees of Ohio University "subject to the terms and provisions of a certain

contract entered into between Olivian B. Sloane, former owner, and Albert O. Sloane and Lavenia Sloane, as recorded in Volume 2, Page 159, of the Miscellaneous Records of Athens County, Ohio." The contract here referred to is one entered into under date of August 1, 1927, by and between Olivian B. Sloane as party of the first part and Albert O. Sloane and his wife, Lavenia Sloane, as parties of the second part, by which Olivian B. Sloane granted to Albert O. Sloane and wife the privilege of using the alley on the east side of Inlot No. 62 in the city of Athens, for the purpose of driving automobiles in and out of said alleyway. This grant was in consideration of a grant made by the parties of the second part above named permitting Olivian B. Sloane to drive automobiles on and over the southwest corner of that part of Inlot No. 60 in said city owned by them. There is a further provision in this contract that the same shall be in force only so long as said Albert O. Sloane or Lavenia Sloane shall live, or until they sell said premises. This instrument was not executed with the formality of a deed and it did not, therefore, grant an easement to either of the parties to the contract with respect to the property covered by their respective privileges. And under the rule recognized and applied in the cases of *Wilkins vs. Irvine*, 33 O. S., 138, and *Ycager vs. Tuning*, 79 O. S., 121, it may be doubted whether either of the parties to this contract obtained thereby anything more than a revocable license with respect to the privileges thereby respectively conferred on the parties to the contract. It would seem, on principle, however, that as against Ohio University a more substantial right in Albert O. Sloane and Lavenia Sloane might accrue if this deed executed by Mae V. Bethel containing the provision above quoted is accepted by the President and Trustees of said university. I do not know how or to what extent the apparent right conferred upon Albert O. Sloane and his wife to use the alleyway above referred to will affect the use which Ohio University desires to make of this property. You are doubtless more familiar with the facts in regard to this situation than I am. Nevertheless, I deem it my duty to call your attention to the legal consequences attending said contract and the reference thereto in this deed.

Other than the contract above referred to, the abstract of title shows that as of the date of the certification thereof this property was free and clear of all encumbrances whatsoever. However, about a year and nine months have passed since the certification of this abstract and, by reason of this fact, I do not feel that I am authorized to finally approve the title to this property until the abstract of title is extended by an additional certificate bringing the title of the property down to date. Whatever may be the fact with respect to other liens and encumbrances which may or may not have attached to this

property since the date of the certification thereof, February 27, 1936, it is certain that the lien of the taxes on this property for two successive years have accrued against the property and in this view, I find it necessary to ask you to secure the additional certificate of title above mentioned.

I am advised by a communication directed by you to Hon. Joseph T. Ferguson, Auditor of State, under date of October 26, 1937, that this property is being acquired by Ohio University under authority of House Bill No. 51, effective June 19, 1937, which act has been carried into the General Code as Section 7931-2, and that the purchase price of the property is to be paid out of the proceeds of moneys borrowed by the university under the provisions of this act. In this connection, I note that there is appended to your communication to the Auditor of State a certificate over the signature of the Cashier of The Athens National Bank stating that you as Treasurer of Ohio University have deposited \$15,500.00 to the credit of the University Dormitory Fund. Although it is not so stated in this certificate, I assume that the purchase price of the property here in question is to be paid out of the fund referred to in said certificate. In this view, the provisions of Section 2288-2, General Code, do not apply to this transaction and no contract encumbrance record or certificate executed by the Director of Finance under the authority of this section is required.

Upon examination of the warranty deed tendered by Mae V. Bethel, I find that the same, as to form, has been properly executed and acknowledged by her and by her husband, Charles Bethel, and that the form of the deed is such that the same is legally sufficient to confer upon the President and Trustees of Ohio University as a corporation an absolute fee simple title to this property free and clear of the dower interest of Charles Bethel as the husband of Mae V. Bethel, the present owner of record of the property. Inasmuch, however, as this property is being acquired by Ohio University under the specific authority of House Bill No. 51, which did not go into effect until June 19, 1937, it is suggested that you have the grantors in this deed reacknowledge the same before the same Notary Public and change the date of the deed so that the same will appear as a deed executed and acknowledged by them as of the date when the new acknowledgment is taken. Or better still, a new deed may be executed and acknowledged by said grantors, in which deed a recital should be made of the exact amount of the consideration that is to be paid for this property, which, I understand, is the sum of \$7,000.00.

I am herewith returning to you the abstract of title to the end that there may be appended thereto an additional certificate extending the abstract down to the present date. I am likewise returning to you

said warranty deed for correction or re-execution in the manner above suggested.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1571.

APPROVAL—BONDS OF FRANKLIN RURAL SCHOOL DISTRICT, WAYNE COUNTY, OHIO, \$16,000.00 (Unlimited).

COLUMBUS, OHIO, December 1, 1937.

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

RE: Bonds of Franklin Rural School Dist., Wayne County, Ohio, \$16,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building and site bonds dated October 1, 1937, bearing interest at the rate of $3\frac{1}{2}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.