

selves,—adopting first by unanimous vote the preliminary resolution as above outlined; then upon receipt of surveys, etc., publishing notice as mentioned in section 3298-7 (unless the facts permit of dispensing with publication under the exception made in said section); next, adopting the “resolution to proceed” as outlined in section 3298-12; and finally, adopting the resolution to issue bonds.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2133.

APPROVAL, BONDS OF HURON COUNTY, OHIO, IN AMOUNT OF
\$74,200 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 3, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2134.

APPROVAL OF DEED FOR REAL ESTATE CONVEYED TO STATE BY
CITY OF TOLEDO.

COLUMBUS, OHIO, June 3, 1921.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Under date April 6, 1921, you wrote to this department as follows:

“Herewith I am transmitting an abstract of title for certain lands in the city of Toledo, which are to be conveyed by said city to the state of Ohio, in exchange for certain lands surrendered by the state to the city of Toledo.

Also a deed conveying title to the state for the land to be acquired by the state. I am also enclosing other documents including a blue-print, showing the land involved, which will assist you in arriving at an opinion on the question of title, which we respectfully request before accepting the deed.”

The deed referred to in your letter is being tendered by the city of Toledo to the state of Ohio as the outgrowth of an agreement or arrangement referred to in an act of the general assembly passed March 21, 1917, and appearing in 107 Ohio Laws, p. 572. The deed bears the corporate name and seal of the city of Toledo, and was on April 5, 1921, signed and acknowledged on behalf of said city by Hon. Cornell Schreiber, mayor, and Hon. Clarence A. Benedict, director of public service. The general description set out in said deed of the property therein conveyed is as follows:

“All that part of the new channel of Swan creek constructed by

the city of Toledo, Ohio, extending from the westerly line of Oliver street produced, with the intersection with the new side cut canal and extending thence easterly and running northerly eighteen hundred (1800) feet more or less, to a point opposite the northerly line of Perry street produced and the entire width thereof, being approximately eighty (80) feet in width, as per profiles on record with the director of public service of the city of Toledo, and the superintendent of public works of the state of Ohio, said new channel of Swan creek being constructed upon lands, parts of which were comprised in the former channel of Swan creek, and towing path and berm embankments constructed by the state of Ohio, and parts of lots Nos. 98, 97, 96, 95, 94, 93, 92, 91, 90, 89, 88, 87, 86 and 85 Oliver division to the city of Toledo, Lucas county, Ohio, lots Nos. 3, 4 and 5 assessor's plat of part of Kelsey's ten acre tract, to the city of Toledo, Ohio; lots Nos. 478, 477, 476, 475, 474, 473, 472, 471 and 470 Port Lawrence division, Toledo, Ohio; lots Nos. 1 to 12 inclusive and lots 14 to 31 inclusive of Receiver's addition, Toledo, Lucas county, Ohio."

Following said general description is a lengthy description by metes and bounds.

The documents submitted for the examination of this department in respect to the city's title to said real estate, are as follows:

(1) "Statement of Owners and Lien-holders," prepared for the city of Toledo by The Title Guarantee & Trust Co. (Abstracter's number 57021), consisting of 150 sections, dated December 15, 1920, with memoranda added under date April 5, 1921. This statement deals with conveyances to the city of Toledo for the lands noted in the above-quoted general description as being in Oliver division; Kelsey's ten acre tract; Port Lawrence division and Receiver's addition, save that it does not show any conveyances of lots 18 to 31 Receiver's addition or of that part of lots 470 to 473 Port Lawrence division lying easterly of Ottawa street except a quit claim deed from the Toledo and Cincinnati Railroad Company to the city of Toledo, of date March 21, 1921.

(2) Abstract prepared for the Bostwick-Braun Co. by The Title Guarantee & Trust Co. covering lots 1 and 2 Receiver's addition, beginning with year 1860. This abstract also covers parts of towing path originally conveyed by state of Ohio to the Walbridge Realty Co., and afterwards acquired by the Bostwick-Braun Co. (Abstracter's number 55137.)

(3) Two abstracts prepared for J. B. Friend by the Title Guarantee & Trust Co. (Abstracter's numbers 52136 and 52137), beginning with the year 1860 and covering lots 9, 10 and 11, Receiver's addition.

(4) Abstract prepared for J. B. Friend by The Title Guarantee & Trust Co. (Abstracter's number 52155), covering lots 12, 14, 15 and 16, Receiver's addition, from about the year 1860.

(5) Abstract prepared for J. B. Friend by The Title Guarantee & Trust Co., covering the southerly nine feet of lot No. 17 Receiver's addition and that part of lot 470 Port Lawrence division lying between Ottawa street and Swan creek (Abstracter's number 52230), from about the year 1860.

(6) Abstract prepared for J. B. Friend by The Title Guarantee & Trust Co., covering the westerly part of lot 471 Port Lawrence division (part lying between Ottawa street and Swan creek) from about the year 1850 (Abstracter's number 52154).

(7.) Abstract prepared for J. B. Friend by The Title Guarantee & Trust Co., covering part of lot 478 Port Lawrence division between Ottawa street and Swan creek not appropriated for Lafayette street and covering, also part of Kelsey's ten acre tract (beginning about the year 1839)—Abstracter's number 52236.

(8.) Abstract prepared for J. B. Friend by The Title Guarantee & Trust Co., covering part of Kelsey ten acre tract—Abstracter's number 52456.

(9.) Memorandum prepared May 25, 1921, by The Title Guarantee & Trust Co. (Abstracter's number 57021-A), relating (1) to release of mortgage on part of lot 470 Port Lawrence division and the southerly nine feet of lot 17, Receiver's addition, and (2) to release of mortgage on parts of lots 85, 86 and 87, Oliver's division.

(10.) Statement submitted by John B. Friend, entitled "Opinion of Title—Lots 1 to 31, inclusive, Receiver's addition," dated April 4, 1921.

(11.) Affidavit of John B. Friend, dated April 4, 1921.

These documents, as you will note, do not constitute a complete abstract of title to the lands described in the deed which the city is tendering to the state, and hence cannot furnish the basis for an opinion of this department of a good and indefeasible title in the city. On the other hand, the documents submitted are of sufficient scope to indicate that the city has probably procured a good title as the result of painstaking and comprehensive efforts made by those who have acted on its behalf. Under these conditions, it is proper to recur to the terms of the deed itself and to take into account the circumstances under which it is being made.

The deed contains this clause:

"Further the city of Toledo does warrant and defend the same against all claim or claims whatsoever,"

and also contains the clause directed to be included therein by section 3 of act of March 21, 1917. The city council by Ordinance No. 1944, adopted September 13, 1920, authorized a warranty deed (see certified copy from Vol. 19, p. 2, Record of Ordinances). The purpose of the deed is made clear by the act of the general assembly of March 21, 1917, as above referred to—namely, to bring about an exchange of property as between state and city so as to enable the city to carry out extensive municipal improvements. It becomes plain, therefore, that under its general corporate powers (see sections 3698 and 3699, G. C.) and under authority of the special act last mentioned, the city is fully empowered to make the deed, and that technical considerations in the matter of title are of secondary importance as compared with the full protection afforded the state by the terms of the deed itself, taken in the light of the circumstances under which it is made.

I, therefore, have no hesitation in advising you that if you find the description of the property as set out in the deed to be proper and in accordance with the contract made between the state and city as referred to in the act of March 21, 1917, you will be at liberty to accept the deed as a compliance by the city with the terms of said act of March 21, 1917.

Respectfully,

JOHN G. PRICE,

Attorney-General.