

price to be paid in monthly payments, I assume that title to said real estate has passed to the ward. Clearly, the entire property can not be exempt from taxation because it does not represent an investment of funds derived solely from the United States Veterans Bureau. However, I see no reason why the interest of such ward to the extent of the amount paid for him should not be exempt. If a guardian, with the approval of the Probate Court, as required by section 10506-41, General Code, purchases an undivided half interest in real estate with funds of his ward received from the Veterans Bureau, the entire real estate could not be exempt from taxation, but surely the one-half interest owned by such ward, which represents an investment solely of funds received from the Veterans Bureau, would be entitled to exemption.

In the case of *Yates County National Bank vs. Carpenter*, 119 N. Y. 550, in construing a New York statute which exempted pensions granted by the United States for military services from levy by virtue of an exemption the court held that where the pension funds are so mingled with other funds so as to be incapable of identification or separation, the pensioner loses the benefit of the exemption, but where "a pensioner who had a wife and family purchased a house and lot for a home, paying a portion of the purchase price out of the proceeds of a pension certificate, and giving a mortgage on the premises to secure the balance, held, that the premises were exempt from levy and sale on execution." This holding was based on the theory that the only interest the pensioner had in the real estate was an equity of redemption which did not exceed in value the sum paid for it, and it therefore represented to the extent of his interest the proceeds of his pension.

By like reasoning, the interest of the ward in the real estate to the extent of the portion of the purchase price paid represents the proceeds of the compensation, insurance or allowance received by his guardian from the Veterans Bureau.

I am of the opinion, therefore, that when a guardian of an incompetent person or minor, with the approval of the probate court, purchases real estate, paying a portion of the purchase price thereof with funds received from the United States Veterans Bureau by said guardian for said ward, the balance of said purchase price to be paid in installments or at a future time, and title to said real estate is taken in the name of such ward, the interest of said ward in said real estate, to the extent of the amount of the purchase price so paid, is exempt from taxation.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4240.

DISAPPROVAL. ABSTRACT OF TITLE TO LAND OF ANNA M. ROSELL,
IN VILLAGE OF LEBANON, WARREN COUNTY, OHIO.

COLUMBUS, OHIO, April 9, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter submitting for my analysis an abstract of title, warranty deed, approval of board of control, tax receipts for December, 1931, and encumbrance estimate No. 1380, relating to the proposed purchase of three tracts of land in the village of Lebanon, Warren County, Ohio,

from Anna M. Rosell. The first and third of said tracts are located in outlots Nos. 1, 2 and 3 of Elliotts Addition to the village of Lebanon, and the second tract is located in section 36, town 5, range 3, between the Miami Rivers.

The first tract in the proposed deed to the state lies partially in outlot No. 3 in Elliotts Addition to Lebanon. One of the deeds in the chain of title of that part of outlot No. 3 to be conveyed to the state is that made in 1860 from William A. Stickleman to William C. Lewis and Thomas Beachey (p. 13, abstract). This deed conveys that part of said outlet No. 3

“Beginning at a stake at the North west corner of out lot No. 2 and running thence N. $1\frac{1}{2}^{\circ}$ E. 1.20 chains to a stone; thence S. $89\frac{1}{2}^{\circ}$ E. 10.13 chains to a stone; thence S. $1\frac{1}{2}^{\circ}$ W. 1.20 chains to a stake; thence N. $89\frac{1}{2}^{\circ}$ W. 10.13 chains to the place of beginning containing $1\frac{22}{100}$ acres.”

From said description, it is impossible for me to ascertain whether the land therein described includes all of that part of said outlot No. 3 in the first tract of the state deed. The description in the deed by Stickleman begins at a stake at the northwest corner of outlot No. 2 and then runs in a northerly direction 1.20 chains (79.2 feet) to a stone. However, it is impossible to ascertain from the abstract how far up into said outlot No. 3 the first tract in the state deed goes, because that fact is not disclosed. Likewise, it is impossible to tell whether the land described in the deed made by said Stickleman goes clear over to the east line of said outlot No. 3 so as to include all of that part of outlot No. 3 mentioned in the first tract of the state deed. I should like some supplemental information to indicate that said Stickleman deed does include all of the land in said outlot No. 3 in the first tract of the state deed.

The first tract in the state deed is conveyed as one single tract for the first time in the deed executed in 1922 by Josephine Sargent and Sam Sargent to George W. Cropper, Trustee (p. 7, abstract). However, said Josephine and Sam Sargent received said land in a deed in which the land was described not as one single tract, but as consisting of two separate tracts (p. 9, abstract). While the deed from said Sargents to said Cropper purports to convey one tract of land which, beginning at the south line of said outlot No. 1, is solid and continuous through said outlots Nos. 1 and 2 up into said outlot No. 3, it is apparent that said grantors did not own such a solid and continuous tract, because the two tracts conveyed to them in the deed on page 9 did not come together so as to form one unbroken tract. In said deed to said Sargents (p. 9, abstract), the first tract is described as being the same land as in the deed from Beller to Smith, recorded Vol. 60, page 558 (see p. 27, abstract) and the second tract is described as being the same land as in the deed from Lewis to Smith, recorded Vol. 61, page 328 (see p. 11, abstract). It is clear that said two tracts do not come together. There is a space between them. The northern tract (that on p. 11, abstract) comes down only to the north line of said outlot No. 1; while the southern tract (that on p. 27, abstract) begins at the southern line of said outlot No. 1, but apparently does not extend all the way up to the northern line of said outlot No. 1. It extends up only 2.87 chains (189.42 feet) from said south line. Since the figures on the map show that there are 203.77 feet between the north and south lines of said outlot No. 1, it would seem that there is a strip of land 14.35 feet wide between the two tracts deeded on page 9 and that said Sargents had no authority to make a single tract of the former two tracts and to include said 14.35 foot strip within it. This conclusion is strengthened by the fact that the second call in the deed

on page 27 runs in a northerly direction "to a stake on the south side of *an alley*."

Moreover, it would seem that the fifth call in said deed from said Sargents to said Cropper causes said deed to take in more land than is justified by the deed to said Sargents. The only land conveyed to said Sargents in said outlet No. 1 is the first tract mentioned in the deed on page 9 of the abstract. Said first tract is the same land conveyed on page 27 of the abstract. Said land on said page 27 comprises a tract which extends 1.06 chains (69.96 feet) west of the east line of said outlet No. 1 and 2.87 chains (189.4 feet) north of the south line of said outlet No. 1. Hence, there is no justification for said fifth call (which begins at a point 70 feet west of the east line of said outlet No. 1 and 183.42 feet north of the south line of said outlet No. 1) shooting off in a westerly direction in said outlet No. 1 entirely outside of the boundaries of said first tract on page 9.

I wish now to point out an irregularity concerning the sixth call, forming the northwestern boundary, in the first tract of the proposed deed to the state. Said call reads

"thence parallel with center of said tract on a curve, the chord of which runs N. $25\frac{1}{4}^{\circ}$ E. 246.5 ft. to an iron pin."

The deed from Lewis to Smith (p. 11, abstract) is one of the links in the chain of title to the land bounded by said northwestern line in the first tract of the state deed. Said deed from Lewis to Smith uses these words in describing said northwestern boundary

"Thence parallel with center of said tract (track??) on a curve the chord of which runs S. $25\frac{1}{4}^{\circ}$ W. 3.76 $\frac{1}{2}$ chains (248.49 feet) to a point in the North line of out lot No. 1 of Elliots Addition."

Thus, it is seen that the northwestern boundary line in said deed from Lewis to Smith is 248.49 feet long beginning in the northwest corner of the land therein described and running southwesterly to a point in the north line of said outlet No. 1; while the corresponding line in the first tract of the state deed is only 246.5 feet long, although it begins at a point much lower than the north line of said outlet No. 1 on the map. I am aware of the fact that monuments control distances. Nevertheless, it would seem expedient to have this fairly unusual discrepancy investigated. A similar irregularity is disclosed in tracing the history of the call describing the northern part of the east boundary line of the first tract in the state deed. Thus, the first call in said deed from Lewis to Smith (p. 11, abstract) begins at the southeast corner of said outlet No. 2 and goes

"Thence with the East line of said out Lots 2 and 3 N. $3\frac{1}{4}^{\circ}$ E. 3.47 $\frac{1}{2}$ chains" (229.35 feet).

The eighth and corresponding call in the first tract of the state deed reads

"S. $3\frac{1}{2}^{\circ}$ W. 219.35 ft. to a stake."

Thus, the latter is 10 feet shorter than the former, although the latter comes down below the north line of said outlet No. 1, while the former stops at the north line of said outlet No. 1.

After the abstract traces the title of the land proposed to be conveyed to the state down to The Eco-Thermal Company, it then shows a "Sheriffs Deed upon Judgment and Execution" (p. 2, abstract) in which "The Eco-Thermal Company

by Sheriff" conveys said property to "The Lebanon-Citizens National Bank & Trust Company," "Free and clear of all claims of all parties to cause No. 14429 in the Court of Common Pleas of Warren County, Ohio." Inasmuch as the abstract does not set forth the proceedings leading up to said judgment, execution and deed, it is impossible to tell from the abstract whether said proceedings were regular and whether, therefore, they actually served to transmit the title from The Eco-Thermal Company to The Lebanon-Citizens National Bank & Trust Company. These proceedings must be set forth in the abstract.

It is disclosed on page 32 of the abstract that, in 1929, The Eco-Thermal Company mortgaged to Tooke & Reynolds, a partnership, the first two tracts of land mentioned in the proposed deed to the state, for the sum of \$10,000.00. The abstract indicates (p. 32) that this mortgage was referred to in said case No. 14429, The Lebanon-Citizens National Bank & Trust Company, plaintiff, versus The Eco-Thermal Company, defendant, but it does not state with sufficient certainty that the mortgage was foreclosed in that case, which, of course, is important to know. Neither is there anything to show that said Tooke & Reynolds were made parties to said foreclosure proceedings. Though the sheriff's deed on page 2 of the abstract indicates that the conveyance is made free and clear of all claims of all parties to said cause No. 14429, yet there is nothing in the abstract to show who those parties were.

Furthermore, it appears that tract No. 3 in the proposed deed to the state is subject to the mortgage for \$950.00 made by Samuel and Josephine Sargent in 1919 to The People's Building, Loan & Savings Company of Lebanon, Ohio (p. 33, abstract). The second tract in said mortgage is described as being the same tract in the deed from Oliver to Beller, recorded Vol. 46, page 315 (see p. 28, abstract). The latter deed includes the land described in tract No. 3 in the state deed. The abstract (p. 33) indicates that said mortgage was canceled and released in so far as it covered and affected that part of the premises therein described which had been conveyed by Samuel Sargent and Josephine Sargent to George W. Cropper, Trustee, containing 572/1000 acres (see p. 7, abstract), but it is specifically stated that "This mortgage remains in full force and effect as to the remainder of said premises." The land described in said deed from the Sargents to Cropper goes around but does not include the land described in the third tract of the state deed. Hence, so far as the abstract shows, said third tract is still subject to said mortgage. There is nothing to indicate that this mortgage was foreclosed in case No. 14429 mentioned above.

The abstract indicates (p. 52) that in 1926 Margaret Sumner made a lease to The Eco-Thermal Stove Company, "for such a time as Eco-Thermal holds factory by lease or purchase," of the following described real estate

"A strip of land beginning on property line located 35 ft. south of and in direct line with East side of factory building and 7 feet East and running in a straight line to a point 4 ft. north of and 18 feet east of the southeast corner of the factory building."

I am unable to tell from said description whether the land subject to said lease is any part of the land now proposed to be conveyed to the state. Neither can I tell whether this lease is still in existence because no information is furnished establishing the existence or non-existence of the facts which control the length of the lease.

The remarks made in the preceding paragraph about the lease therein dis-

cussed also hold true for the lease made in 1925 by Margaret Sumner to The Eco-Thermal Stove Company, Inc. (p. 53, abstract).

Because of the deficiency pointed out above, I am unable to approve the title to this land as it is disclosed in this abstract. Further information must be furnished ironing out these difficulties.

The first half of the taxes for the year 1931 are paid, but the second installment of the 1931 taxes, payable in June, 1932, are a lien upon the property.

Inasmuch as the lien of the state for taxes levied each year attaches to all real property subject to such taxes on the day preceding the second Monday in April, annually, I deem it advisable to call your attention to the fact that the lien for the taxes of the year 1932 will attach to this property on April 11, 1932.

In the original abstract certified under date of June 30, 1931, the following statement is made (p. 54, abstract) concerning special assessments:

"Sewer assessed on 35 foot frontage basis, total \$268.82 payable in ten semi annual installments certified on September 10, 1928, of which five semi annual assessments have been paid. The installment falling due in June, 1931, being \$30.92.

Curb and Gutter Assessments assessed on 52½ foot frontage basis, total assessment \$57.38, payable in ten semi annual installments, certified on September 8, 1930, and one installment having been paid, and the June, 1931, installment amounts to \$7.46."

A continuation certificate by the abstractor, dated February 10, 1932 (p. 55A, abstract), does not make any mention of any further payment of special assessments. However, there are included among the papers submitted to me two receipts for special assessments, the curb and gutter assessment due December, 1931, being for \$7.11, and the sewer assessment due December, 1931, being for \$29.57. Apparently no mention is made concerning the payment of the special assessments due in June, 1931. Further information will be required, therefore, concerning them.

I call your attention to the fact that in July, 1930, when The Eco-Thermal Company conveyed a certain strip of land to one Harry L. Rosencrans (p. 4, abstract), the following paragraph creating an easement was inserted:

"An easement is also hereby granted by The Eco-Thermal Company of Lebanon, Ohio, to the said Harry L. Rosencrans, to enter upon the premises of the grantor herein and lay a pipe line and tap to sewer connections in the driveway of the property of the grantor and to use said sewer in connection with The Eco-Thermal Company."

The proposed deed executed by said Anna M. Rosell is in proper form to convey, with release of dower, a fee simple title to the state of Ohio.

The grantor states that she warrants and will defend the premises against all claim or claims, of all persons whomsoever;

"Excepting taxes and assessments against said premises. The grantors herein agree to pay all taxes and assessments up to and including the installment falling due in December, 1931, and the grantee assumes all taxes and assessments falling due thereafter, beginning with the installment of June, 1932."

Encumbrance estimate No. 1380 shows that there is sufficient money in the proper appropriation account to pay for said land. The state controlling board has given its approval to the purchase.

Enclosed please find all of the papers of which I acknowledged receipt above.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4241.

JUSTICE OF PEACE—FAILURE TO SECURE COMMISSION FROM SECRETARY OF STATE THROUGH ERROR OF BOARD OF ELECTIONS—NO VACANCY OF SUCH OFFICE.

SYLLABUS:

Vacancy in office of a justice of the peace, discussed.

COLUMBUS, OHIO, April 11, 1932.

HON. LEE D. ANDREWS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent request for my opinion, which reads as follows:

“At the last general election a candidate was duly elected to the office of Justice of Peace in a certain township. About the first of December he received his certificate of election but failed at this time to send to the Governor for his commission. On January 1, 1932, the Justice of Peace Elect had therefore failed to qualify and on this date the newly elected board of trustees of this township declared a vacancy in the office of Justice of Peace for the reason of failure of candidate to qualify. At this meeting another man was appointed by the trustees to fill this vacancy. Subsequent to this meeting the duly elected Justice of Peace received his commission from the Governor and took the oath of office on or about the 15th day of January and filed a bond with the board of trustees.

The trustees failed to notify the clerk of such vacancy as is required by section 1714 G. C.

The question now arises, does a vacancy occur and if so, how shall the trustees fill this vacancy?”

A subsequent communication from you discloses that the county board of elections forwarded the certificate of election to the successful candidate instead of holding the same for forwarding to the Secretary of State, as required by Section 140, General Code. I am also advised that the commission of the candidate in question, was recorded in the office of the Secretary of State, on January 11, 1932.

Section 140, *supra*, reads as follows:

“When the result of the election of any such officer is officially known to the deputy state supervisors of elections of the proper county,