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APPROVAL, SUBJECT TO CERTAIN CONDITIONS, PREMISES SITUATE IN FRANKLIN COUNTY, OHIO, CLINTON TOWNSHIP, LOT NUMBER ONE, FRANKLIN COUNTY INFIRMARY FARM.

COLUMBUS, OHIO, June 23, 1921.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You have recently submitted an instrument, certified to by John K. Kennedy, attorney at law, June 7, 1921, as being a copy of an abstract prepared by the Guarantee Title and Trust Company, which said instrument was further continued on June 16, 1921, inquiring as to the status of the title to the following described premises:

Situate in the county of Franklin, in the state of Ohio, and in the township of Clinton; being lot number one (1) of the subdivision of the Franklin County Infirmary farm, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book No. 3, page 4, Recorder's office, Franklin county, Ohio.

In the early transfers as disclosed by said instrument there are a number of irregularities and it is difficult, if not impossible, to trace the complete history of the title. However, a tract containing said premises was conveyed by the executor of the estate of Samuel G. Fleniken to William Neil, March 1, 1853, and since said date an accurate history of the title of said premises is disclosed.

William Neil conveyed a tract of land in which said premises were contained, which was afterwards known as the county infirmary farm, to the commissioners of Franklin county, in 1869. Said commissioners, in pursuance to an act of the general assembly of Ohio passed February 25, 1875, subdivided into lots said infirmary farm, and in pursuance of said authority, conveyed the premises under investigation to John Walsh, in 1881.

In view of the time that has elapsed since the conveyance in 1853 heretofore described, it is believed that the fact that the history to said premises is indefinite prior to that time need not be given serious consideration.

After careful consideration it is my opinion that the instruments under consideration show a sufficient title to said premises to be in the name of F. D. Sullivan, subject to the following incumbrances:

In section 5 of the continuation to said abstract there is shown a mortgage given upon said premises by F. Dell Sullivan and wife to George W. Burns, to secure the payment of \$2,500.00 with interest. According to the abstract this mortgage has not been released of record, and constitutes a lien upon the premises. Before accepting a conveyance you should determine that this mortgage is paid and properly released of record.

In section 8 of said continuation there is a record of a suit in the common pleas court of Franklin county, in which Florence Dell Sullivan is plaintiff, vs. Max Topper, et al., defendants, being No. 79,843. According to the abstract, plaintiff recovered a judgment May 10, 1920. However, it is noted that the defendants in this case filed a cross petition asking damages in the sum of \$43,864.36. According to the abstract said cause is pending in the court of appeals on error. It will be observed that there is a possibility of said cause being retried, in which event, of course, a judgment could be rendered against

the plaintiff. However, this department has been advised by the assignment commissioner of Franklin county that there is no possibility of another judgment being rendered in said cause in the common pleas court during the present term. Inasmuch as section 11656 G. C. provides that a judgment shall be a lien upon real estate "from the first day of the term at which it is rendered," and in view of the information from the assignment commissioner as above set forth, it is believed that this need not be considered as a serious objection, if the transaction is closed and the conveyance made during the present term of the common pleas court, or before the beginning of the next term.

At section 9 of said continuation a suit is shown pending in the court of common pleas of Franklin county, Ohio, in which John Barton Payne, director general of railroads, is plaintiff, vs. F. D. Sullivan, defendant; amount claimed, \$138.53. The assignment commissioner advises that there is a possibility that this case may be tried during the present term of court, and in that event, of course, judgment may be rendered against the defendant, in which case it would constitute a lien upon the premises. You should therefore not accept a conveyance of said premises without taking some precaution to protect the state against the operation of said judgment lien, in the event that it materializes.

The taxes for the year 1921 are unpaid and a lien.

The abstract discloses that no examination was made in any of the United States courts.

You have also submitted a certificate from the auditor of state to the effect that there is a balance in the appropriation for interest on endowment fund, Ohio State University, to cover the proposed contract between the board of trustees of Ohio State University and the said F. D. Sullivan, relative to the purchase of said real estate.

A deed has also been submitted, executed by said F. D. Sullivan and wife, conveying said premises to the state of Ohio, which in my opinion is sufficient to convey all the title and interest of the said F. D. Sullivan.

Said abstract, deed and certificate above referred to are returned herewith.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*