

provision reserving to the donor the right to withdraw from time to time any part or all of the trust estate held under the trust agreement; and that notwithstanding this provision the court held the settlement there in question to be a valid trust. Apparently, the conclusion reached by the court in this case upholding the instrument there in question as a valid trust settlement, was founded solely upon an amendment of section 8617, General Code, passed April 29, 1921, by which the following provision was added to said section:

“but the creator of a trust may reserve to himself any use or power, beneficial or in trust, which he might lawfully grant to another, including the power to alter, amend or revoke such trust, and such trust shall be valid as to all persons, except that any beneficial interest reserved to such creator shall be subject to be reached by the creditors of such creator.”

Although the precise question presented for determination in the case of *Union Trust Company vs. Hawkins* was with respect to the devolution of the title to the principal or corpus of the trust after the death of the donor in accordance with the directions of the trust instrument, and the consideration of the court was not directed to the more general question as to whether the instrument created a trust or an agency, the court in holding that said instrument effected a transfer of the title of the corpus of the trust property after the death of the donor to the beneficiaries named in the trust instrument, necessarily held that the instrument created a valid trust as distinguished from a mere agency.

In view of the decision of the Supreme Court of this State in the case of *Union Trust Company vs. Hawkins*, supra, on the instrument there in question, I am not prepared to hold that the instrument executed by W. B. to The Toledo Trust Company creates any relation other than that of a valid trust, notwithstanding the fact that this instrument, as above noted, reserves to the donor exceedingly broad powers with respect to the modification of the trust including the right to withdraw from the trust any or all property constituting the principal or corpus of such trust. I am of the opinion, therefore, that the instrument here in question created a valid trust and that the same should be so considered in the administration of the provisions of the intangible and personal property tax law with respect to trusts of this kind.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

4234.

APPROVAL, ABSTRACT OF TITLE, ETC., RELATING TO THE PURCHASE OF LAND IN HANOVER TOWNSHIP, ASHLAND COUNTY, OHIO—RHODA BLACK.

COLUMBUS, OHIO, May 7, 1935.

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

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, warranty deed,

contract encumbrance record No. 16, Controlling Board certificate and other files relating to the purchase by the state of Ohio, for the use of the Ohio Agricultural Experiment Station, of a certain tract of land in Hanover Township, Ashland County, Ohio, which tract of land is in the Northwest quarter of the Southeast quarter of Section 16, Township 19, Range 16 in said county and township and is more particularly described by metes and bounds as follows:

Beginning at a point on the middle section line which divides the SW and the SE quarters of Section 16, 232.01 feet N 2° 51' 40" E from the point where said line crosses the center line of State Highway No. 97; thence N 2° 51' 40" E 499.62 feet along said middle section line to the center of Section 16; thence S 88° 52' 58" E 1351.73 feet along the middle section line which divides the NE and the SE quarters of Section 16, to a state land boundary monument; thence S 2° 44' 15" W 728.08 feet to the center line of State Highway No. 97; thence following said center line along an arc whose radius is 1847.6 feet, 215.78 feet; thence N 88° 25' W 157.29 feet; thence along an arc whose radius is 818.49 feet, 201.19 feet; thence N 74° 20' W 101.01 feet; thence along an arc whose radius is 520.85 feet, 204.24 feet; thence S 83° 12' W 282.32 feet; thence, leaving the center line of said highway, N 2° 51' 40" E 204.50 feet; thence N 87° 11' 15" W 206.40 feet to the place of beginning, and containing 20.86 acres, subject to all legal highways.

Upon examination of the abstract of title submitted, which abstract is certified by the abstracter under date of March 1, 1935, I find that Rhoda Black, the owner of record of the above described property, has a good and indefeasible fee simple title to said premises; and that she owns and holds this property free and clear of all encumbrances except the undetermined taxes on the property for the year 1935 and except the oil and gas and pipe line leases hereinafter referred to. Before the transaction for the purchase of this property is closed there should, of course, be some adjustment of the undetermined taxes on this tract of land by payment or otherwise. In this connection it is noted that the tract of land above described has never been carried on the auditor's tax list in duplicate as a separate entry but the same has been included as a part of the larger tract of land which has been entered for taxation on said tax list in duplicate. It follows from this that before there can be any payment of taxes on the property here in question the taxes with respect to this tract of land must be segregated from those on the whole entry. Further, with respect to the payment of these undetermined taxes, it is noted that the deed tendered to the state of Ohio contains a covenant that the property is free and clear of all encumbrances whatsoever. This indicates the agreement of the grantor to pay all taxes that may be a lien on this property. As to this, it is noted, however, that the deed was executed on March 1, 1935, a month or more before the taxes for the year 1935 became a lien upon this property. And it may be that the understanding between your department and the grantor was and is that the grantor was to pay the taxes on the property up to and including the taxes for the year 1934.

A further possible exception to the title in and by which Rhoda Black owns and holds this property is that under date of December 15, 1904, one Stephen Mapes, who then owned this and other tracts of land aggregating 135 acres of land, executed an oil and gas lease on this land to one Philip Krebs who thereafter assigned and transferred his interest in the lease to the Ohio Fuel Supply Company. This lease was one for a term of 10 years and so long thereafter as oil or gas might be produced from the land. There is nothing in the lease to show what, if any, developments have been made un-

der this lease for either oil or gas or, if either has been produced, whether such production in any wise affects the tract of land here in question. This is a matter which should be investigated by you before this land is purchased; although it is not at all probable that either this lease or any developments under the same will interfere with the use that you desire to make of this property even if it should not appear that this lease has been wholly abandoned.

On October 22, 1914, one W. A. Waddell, who then owned the lands here in question as a part of a larger tract of land, executed an oil and gas lease of such lands to the Ohio Fuel Supply Company which company later assigned the lease, except as to mineral oil, to the Ohio Fuel Gas Company. Although there is nothing in the abstract to show any development by the Ohio Fuel Supply Company for oil under this lease it does appear that the Ohio Fuel Gas Company has developed one or more gas wells on the 135 acre tract of land covered by this lease. Whether the gas well or wells developed under this lease are on a tract of land here in question or otherwise affect the same does not appear. And this, also, is a matter for your determination in connection with your purchase of this property.

It may be likewise noted that under date of December 7, 1912, said W. A. Waddell executed a pipe and telegraph line lease on and through the 135 acre tract or tracts of land above referred to. There is nothing in the abstract as to what, if anything, was done by this lessee under this lease; and, still less, is there anything in the abstract to show this lease or anything done by said lessee under the same will in anywise affect the use that your department desires to make of this property.

The warranty deed, which has been tendered to the state of Ohio for the purpose of conveying to it the property above described, has been executed by one D. C. Nouse as Attorney in Fact for Rhoda Black, the owner of this property, under a power of attorney properly executed by said Rhoda Black, under date of February 20, 1935. It is noted that said deed has been executed in the name of said D. C. Nouse, as Attorney in Fact for Rhoda Black and not, as might have been properly done, in the name of Rhoda Black as the grantor in said deed by D. C. Nouse, her Attorney in Fact. This error, if it be such, in the execution of the deed is cured by the provisions of Section 8514, General Code, which section, by its terms, validates a deed executed in this form. By reason of the provisions of this section of the General Code and the further fact that the deed has been otherwise properly executed and acknowledged and the same is in such form as to convey this property to the state of Ohio by full fee simple title with the covenant of warranty against all encumbrances whatsoever, said deed is hereby approved.

Contract encumbrance record No. 16, which has been submitted as a part of the files relating to the purchase of this property has been properly executed and the same shows a sufficient unincumbered balance in the proper appropriation account to the credit of your department to pay the purchase price of this property which purchase price is the sum of \$400.00.

By a recital in this contract encumbrance record, as well as by the certificate of the Controlling Board, it appears that said Board has approved the purchase of this property and has released from the appropriation account the money necessary to pay the purchase price of the same.

Subject to the exceptions above noted the title of Rhoda Black to this property and the abstract of title covering the same are hereby approved as are the warranty deed, encumbrance record and other files submitted, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

4235.

APPROVAL, SUPPLEMENTAL ABSTRACT, ETC., RELATING TO THE PROPOSED PURCHASE OF PARCEL OF LAND IN VILLAGE OF OXFORD, BUTLER COUNTY, OHIO—FRANCES McFARLAND BONHAM.

COLUMBUS, OHIO, May 7, 1935.

MR. W. P. ROUDEBUSH, *Secretary, Board of Trustees of Miami University, Oxford, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication, enclosing supplemental abstract, warranty deed and contract encumbrance record No. 1636 relating to the proposed purchase of a parcel of land owned of record by one Frances McFarland Bonham in the village of Oxford, Butler county, Ohio, the same being a part of outlot number eight (8) and being more particularly described as follows:

“Beginning at a point in the east line of said Outlot Number Eight (8) a distance of One Hundred Sixty-five (165) feet north of the southeast corner thereof; thence north along the east line of said Outlot Number Eight (8) a distance of Sixty (60) feet to a point; thence west on a line parallel with the south line of said Outlot Number Eight (8) a distance of Two Hundred Fourteen and Five Tenths (214.5) feet; thence south on a line parallel with the east and west lines of said Outlot Number Eight (8) a distance of Sixty (60) feet to a point; thence east on a line parallel with the south line of said Outlot Number Eight (8) a distance of Two Hundred Fourteen and Five Tenths (214.5) feet to the place of beginning; the tract herein conveyed being the north Sixty (60) feet of the south Two Hundred Twenty-Five (225) feet of the east Two Hundred Fourteen and Five Tenths (214.5) feet of Outlet Number Eight (8).”

Upon examination of the supplemental abstract submitted to me and of the original abstract and addenda thereto, submitted in connection with the purchase by the Board of Trustees of Miami University of other parcels constituting a part of Outlot Number Eight, I find that Frances McFarland Bonham has a good and indefeasible fee simple title by perpetual leasehold to the above described parcel of land free and clear of all encumbrances except the following liens which are here noted as exceptions to the title in and by which Frances McFarland Bonham owns and holds this property:

(1) It appears from the abstract that taxes, assessments and penalties on this property for the last half of the year 1933, amounting to the sum of \$110.92 are unpaid and delinquent and are a lien upon the property against which they were assessed including the parcel of land above described. It likewise appears that the taxes and assessments for the year 1934 on that part of Outlot Number Eight owned by Mrs. Bonham and which taxes and assessments for the first half of said year amount to \$106.47 are unpaid and are a lien upon the property. The undetermined taxes for the year 1935 are likewise a lien upon this property. Just what part of the taxes and assessments which stand as a lien upon this entry of real property is to be attributable to the particular parcel of land above described can only be determined by a segregation of said taxes and assessments by the county auditor when the deed for this property is filed with him for transfer.

(2) The property here in question, together with other property owned by Frances McFarland Bonham in Outlot Number Eight is subject to the lien of a mortgage which was executed by Mrs. Bonham and her husband to the Oxford Loan and Building