ion that your second question must be answered in the negative. It is further my opinion that, upon an application for a license being made it then devolves upon you to cause an investigation to be made of the plant and equipment of the applicant. If it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant and that the plant is in a sanitary condition, then a license should be issued to such applicant.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2622.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF JACOB Y. DYKE AND E. B. HATFIELD, IN FRANKLIN TOWNSHIP, ROSS COUNTY, OHIO.

COLUMBUS, OHIO, September 24, 1928.

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

DEAR SIR:—There has been submitted for my examination corrected abstracts covering two separate tracts of land in Franklin Township, Ross County, Ohio, of which Jacob Y. Dyke and E. B. Hatfield are the owners of record, and which said tracts of land are more particularly described as follows:

> *First Tract:* Part of the Virginia Military Survey No. 13,441, being bounded and described as follows: Beginning at a White Oak, corner to Survey No. 14,849 and Number 13,516 and running thence North Fifty (50) degress West One hundred and fifteen (115) poles to a stake on Britton's corner to Survey No. 13,523, thence South with said Britton's line Fifty-one (51) degrees West One hundred and thirty-four (134) poles to a stake, thence Forty-three (43) degrees West Fifteen (15) poles, thence South Sixty-four (64) degrees East Twenty-six (26) poles to a Hickory, thence South Eighteen (18) degrees East Thirty-eight (38) poles to Two (2) Chestnut Oaks, thence South Forty-four (44) degrees East Forty (40) poles to Three (3) Chestnut Oaks corner to Survey No. 14,891 and No. 14,849, thence North Fifty-eight (58) degrees East One hundred and Sixty-six (166) poles to the place of beginning, containing Ninety-nine and one-fourth (99¼) acres, be the same more or less.
>
> *Second Tract:* Being part of Survey No. 14,523, beginning at a large White Oak near the top of the ridge, thence South (41½) degrees East 15.6 poles to a White Oak, thence South (62) degrees East (47.2) poles to a stone, thence South (39) degrees East (40) poles to a stone, thence South (57) degrees West (127) poles to a stone, thence North bearing East (135) poles, more or less, containing thirty-five (35) acres, more or less."

From my examination of the corrected abstract of title submitted with respect to the second tract of land above described, I am of the opinion that said Jacob Y. Dyke and E. B. Hatfield have a good and merchantable fee simple title to said tract of land, free and clear of all encumbrances except the taxes on said land, which, as stated in said abstract, are the taxes for the last half of the year 1927 and the undetermined taxes for the year 1928.

However, from the examination made by me of the corrected abstract of title submitted with respect to the first tract of land above described, I am of the opinion that said Jacob Y. Dyke and E. B. Hatfield do not have a good and merchantable fee simple title to said first tract of land above described. As to this tract of land, it appears that for some years prior to the twenty-sixth day of March, 1924, the same was owned by one Elmer E. Marsh, living in Vigo County, in the State of Indiana. On March 26, 1924, said Elmer E. Marsh together with his wife, Josephine Marsh, conveyed said tract of land to Jacob Y. Dyke and E. B. Hatfield by a deed which was signed and acknowledged by the grantors in Vigo County, Indiana. This deed which is set out verbatim in the corrected abstract of title submitted, is one in the form prescribed by Section 13387 of Burns' Annotated Indiana Statutes, which provides that the operative words "convey and warrant" in a deed shall be effective to convey a fee simple title in land to the grantee named therein and to his heirs and assigns, when the same is properly signed and acknowledged by the grantor or grantors.

From the copy of said deed set out in the abstract it appears that the operative words in the granting clause of said deed are:

> "That said Elmer E. Marsh and Josephine Marsh his wife, of Vigor County, in the State of Indiana, formerly of Grant County, Indiana, convey and warrant to Jacob Y. Dyke and E. B. Hatfield of Pike County, Ohio, for the sum of Eight Hundred Dollars the receipt whereof is hereby acknowledged, the following Real Estate in Ross County in the State of Ohio.

and then follows a description of said first tract of land above described herein. There is no habendum clause in said deed and the signatures of the grantors therein are not witnessed. However, the statutes of the State of Indiana do not require deeds executed in that state to be witnessed. It is obvious that the provisions of the statutes of the State of Indiana prescribing the form of deed for the conveyance of lands in that state and providing as to the manner in which the same shall be executed have no application or operation with respect to deeds executed in that state for the purpose of conveying lands in Ohio. However, the mere fact that said deed was not witnessed in the manner provided by the laws of this state does not invalidate said deed for the reason that this situation is provided for by Section 8516, General Code, which reads as follows:

> "All deeds, mortgages, powers of attorney, and other instruments of writing for the conveyance or incumbrance of lands, tenements, or hereditaments situate within this state, executed and acknowledged, or approved, in any other state, territory or country, in conformity with the laws of such state, territory, or country, or in conformity with the laws of this state, shall be as valid as if executed within this state, in conformity with the foregoing provisions of this chapter."

A more serious question, however, arises from the fact that the deed does not, in the granting clause thereof or elsewhere, contain any words of inheritance or perpetuity in connection with the conveyance of said land to the grantee therein named, as was required by the law of Ohio prior to the enactment of Section 8510–1, General Code, which went into effect on the twelfth day of June, 1925. Prior to that time said Section 8510–1, General Code, became effective, a deed conveying lands in this state which did not contain such words of inheritance or perpetuity was effective only to convey to the grantee therein named a life state in such land. The deed here in question, under the laws of the state of Indiana, was in form sufficient to convey to the grantee or grantees therein named a fee simple title to land in Indiana. As above noted, however, the law of Indiana giving this effect to a deed in this form did not have any opera-

tion with respect to the conveyance of land in Ohio, and the only effect of the deed here in question was to convey a life estate in the first tract of land to said Jacob Y. Dyke and E. B. Hatfield, unless it can be said that under the provisions of Section 8516, General Code, they took the same title to this land that they would have taken if the same had been owned by said Elmer E. Marsh in the state of Indiana. As to this, as indicated in other opinions of this department directed to you touching this question, I am inclined to the view that the provisions of Section 8516, General Code, apply only to the formal matters of signing, witnessing and acknowledgment of deeds and other instruments provided for by the several sections of the chapter of the General Code of which said Section 8516 is a part; and that said Section 8516 does not have the effect of curing or supplying omissions with respect to matters of substance in deeds executed in other states conveying lands in this state.

Entertaining this view, I am of the opinion that said Jacob Y. Dyke and E. B. Hatfield have only a life estate in the first tract of land above described, and accordingly the corrected abstract of title with respect to said first tract of land and the title of said Jacob Y. Dyke and E. B. Hatfield thereto are hereby disapproved.

I am herewith returning to you the corrected abstracts of title to both of said tracts of land above described.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2623.

APPROVAL, BONDS OF THE VILLAGE OF BEREA, CUYAHOGA COUNTY —$2,500.00.

COLUMBUS, OHIO, September 26, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2624.

APPROVAL, LEASE TO OHIO CANAL PROPERTY IN THE CITY OF AKRON, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, September 26, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease between the State of Ohio, acting through the Department of Public Works, and L. H. Conger, 196 Ash Street, Akron, Ohio, covering a portion of the Ohio Canal property, between Ash and Cherry Streets, in the City of Akron, Summit County, Ohio.