

provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

This section of the Constitution was adopted on the same day as Section 3, Article XVIII, giving to municipalities the authority to exercise all powers of local self-government, and so forth. These sections are not antagonistic and well may pursue their legal existence, hand in hand.

Answering your questions specifically, I am of the opinion that your bureau may join in a finding, a director of a department of the City of Cleveland, a charter city, having to do with the handling of the city's funds, with his subordinate who failed to account for receipts of the city collected by such subordinate.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2226.

STATUS, ABSTRACT OR TITLE AND OTHER INSTRUMENTS,
STATE OF OHIO, THROUGH DIRECTOR OF HIGHWAYS,
WITH I. KOCH, DESCRIBED LAND, VILLAGE OF LEETONIA,
COLUMBIANA COUNTY, OHIO, PURCHASE PRICE,
\$7,500.00.

COLUMBUS, OHIO, April 4, 1938.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: Some time ago you submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 1605 and other files relating to the proposed purchase of certain tracts of real property which are owned of record by one I. Koch in the village of Leetonia, Columbiana County, Ohio, and which are more particularly described by metes and bounds in a corrected deed this day submitted to me, as follows:

TRACT NO. 1. Known as being part of the Village of Leetonia, Salem Township, Columbiana County, Ohio. Bounded and described as follows: Known as being all of Lots Nos. 555 and 556 in Toomey's Addition to the Village of Leetonia

and part of Lot No. 261 Chamberlain's Addition to the Village of Leetonia bounded and described as follows: Beginning at a point on the north line of Pearl Street, said point being the southwest corner of said Lot No. 261; thence north along the west line of said Lot No. 261 a distance of 150 feet to the north-west corner of said Lot No. 261; thence east along the north line of said Lot No. 261 a distance of 25 feet to a corner; thence south 23 degrees 02 minutes E. 53.8 feet to a point, said point being in an easterly direction a distance of 2.5 feet from the north-east foundation corner of the Depot, formerly owned by the Youngstown and Ohio River Railroad Company; thence south 100.57 feet to a point on the north line of Pearl Street, said point being 14 feet west of the south-east corner of said Lot No. 261; thence west along the north line of Pearl Street a distance of 46 feet to the place of beginning.

TRACT No. 2. Known as being part of the Village of Leetonia, Salem Township, Columbiana County, Ohio. Bounded and described as follows: Beginning for the same at an iron pin on the north line of Stoy Street 56.9 feet east of the east line of Spruce Street, said point being also the south-west corner of Lot No. 464 in Toomey's Addition to the Village of Leetonia; thence north along the west line of Lot No. 464 a distance of 100 feet to the north-west corner thereof; and the south line of Cherry Alley; thence east along the south line of Cherry Alley and the north line of Lot Nos. 464, 465 and 466 a distance of 58.85 feet; thence north 14 feet to the north side of Cherry Alley to a point, said point being 1.95 feet east of the south-west corner of Lot No. 473; thence north 14 degrees 51 minutes east a distance of 66.5 feet; thence north 35.5 feet and parallel with the east line of Lot No. 473 to the south line of Waddle Street and the north line of Lot No. 473; thence east along the south line of Waddle Street a distance of approximately 19.45 feet but to a point on the north line of Lot No. 472, said point being 10 feet east of the north-west corner of said Lot No. 472; thence north 50 feet to the north side of Waddle Street and to a point on the south line of Lot No. 511, said point being 10 feet east of the southwest corner of said Lot No. 511; thence northerly to a point on the north line of Lot No. 511 and the south side of Pine Alley, said point being 14 feet east of the north-west corner of Lot No. 511; thence east along the south line of Pine Alley 21.25 feet; thence north 14 feet to the north line of Pine Alley and the south line of Lot No. 516, said point being 2.5 feet west of the south-east corner of Lot No. 516; thence north 14

degrees, 38 minutes east 65.3 feet to a point; thence north and parallel with the west line of Lot No. 515 36.8 feet to the south line of Pearl Street and the north line of Lot No. 515; thence east along the south line of Pearl Street a distance of approximately 108.85 feet but to a point 2.85 feet east of the northwest corner of Lot No. 259 and 26 feet at right angles from the center line of The Youngstown & Southern Railroad; thence in a south-easterly direction on a 16 degrees 12 minute curve to the left parallel to and 26 feet at right angles from the center line of the said The Youngstown & Southern Railroad 317.59 feet to the west line of Mill Street; thence south along the west line of Mill Street 179.27 feet to an iron pin; thence west 100 feet to an iron pin; thence south 100 feet to an iron pin on the north line of Stoy Street; thence west 383.47 feet to the place of beginning and containing all of Lots Nos. 464 to 472 both inclusive; all of Lots Nos. 512 to 514 inclusive; parts of Lots Nos. 473, 511, 515 and 516 all in Toomey's Addition; all of Lot No. 260; part of Lots Nos. 257, 258 and 259 in Chamberlain's Addition; part of the vacated portion of Stiver Alley; the vacated portion of Pine Alley starting 177.5 feet east of the east line of Spruce Street; all of said alley extending east from said point; the vacated portion of Waddle Street starting 152.25 feet east of the east line of Spruce Street and being all of Waddle Street east of said point; that part of the vacated portion of Cherry Alley starting 115.75 feet east of the east line of Spruce Street, and being all of Cherry Alley from said point east, and also including part of an unplatted tract containing approximately 2.227 acres of land.

The abstract of title referred to above has been supplemented by other files furnished by the owner of the property or by his attorneys at my request as follows: (1) A corrected and extended abstract exhibiting the chain of title to a forty-foot strip of land contiguous to and immediately south of Stiver Alley and extending from Mill Street on the east to Lot 513 of Toomey's Addition on the west; (2) a quit claim deed recently executed by The Youngstown and Suburban Railway Company granting, remising and releasing said forty-foot strip of land to I. Koch; (3) certain affidavits executed by old residents of the village of Leetonia, Ohio, showing that if Stiver Alley, included within the bounds of the second tract as above described, was ever opened for public travel and use, the same was long since abandoned for this purpose, and showing further that Cherry Alley, Waddle Street and Pine Alley were never opened up or used for public travel in or through that part of the prop-

erty here in question known as Stiver Field; (4) a formal release in writing executed by the owners of property in Toomey's Addition to the west of the west boundaries of the second tract of land above described, relinquishing and effectually releasing any rights which they may have in the use of those parts of Cherry Alley, Waddle Street and Pine Alley east of the boundaries of said second tract of land above described for purposes of travel or as a means of ingress and egress to and from their properties; (5) a transcript of the ordinance and proceedings of the Council of the village of Leetonia under date of March 26, 1938, relating to and providing for the vacation of those parts of Pine Alley, Waddle Street, Cherry Alley and Stiver Alley included within the bounds of the second tract of land as above described.

Upon examination of said abstract of title as corrected and of the supplementary files above referred to, I am of the opinion that said L. Koch has a good merchantable fee simple title to the above described tracts of land and to the buildings and other appurtenances thereunto belonging and that he owns and holds this property free and clear of all encumbrances.

Upon examination of the warranty deed tendered by the grantor which, as is above noted, was executed by him under date of March 25, 1938, it is noted that this deed is typewritten on three separate sheets of paper. The body of the deed, including the testatum clause, the signature of the grantor and of his wife and the signatures of the witnesses, is written in and upon the first two sheets; while the acknowledgment of the grantor and of his wife to this deed appears upon the third sheet. The acknowledgment stands alone on this third sheet and no part of the body of the deed or the signature thereto appear thereon. Although this deed as written on these separate sheets of paper is enclosed in a manuscript cover and the whole is permanently bound together by three brass brads or fasteners in such way that no one of the sheets can be removed without some mutilation of the paper, it is a matter of grave doubt whether this deed as executed complies with Section 8510, General Code, which, among other things, requires the acknowledgment of the grantor or grantors in the deed to be on the same sheet on which the instrument is written. See *Winkler vs. Higgins*, 9 O. S., 599; *Norman vs. Shepherd*, 38 O. S., 320; *Rollman and Sons Company vs. The Alaska Realty Company*, 52 O. App., 166; and *Schlacger vs. Title Guaranty and Trust Company*, 37 O. L. R., 474, 13 Abs., 5. And this is true notwithstanding the evident liberality with which the courts in later decisions have been construing the provision of Section 8510, General Code, here in question. And as to this, it will be observed that most of the cases above cited can be distinguished from that here presented by the fact that in most of the cases cited some part of the body of the instrument there in

question, albeit a small part, appeared upon the sheet upon which the acknowledgment was made and certified.

In this situation, I am inclined to the view that this objection should be corrected by the execution of a new deed conforming without question with the provision of Section 8510, General Code, above noted. If this deed has not been acknowledged in the manner required by law, it is not under the law of this state effective to convey the legal title to the property. In this view, I take it that it is but the observance of a proper precaution to suggest the correction of the deed in the manner above indicated.

With respect to the deed tendered to the state by Mr. I. Koch, and which is above referred to, your attention is called to the fact that the property therein described is not identically the same as that described in the first deed tendered by this grantor, or with that described in the contract encumbrance record. The property described in the second deed, which is herewith enclosed, is as to the second tract of land therein set out slightly less in quantity than that described in the first deed (which was returned by me to the grantor's attorney) and in the contract encumbrance record. In this connection, I am advised that the small quantity of land included in the description of the first deed tendered and in the contract encumbrance record and excluded from the description in the present deed, is being reserved by the grantor for the purpose of affording the owners of adjacent properties a means of ingress and egress to and from their properties.

Contract encumbrance record No. 1605 has been properly executed and the same shows a sufficient balance in the appropriation account to pay the purchase price of the property therein described, which purchase price was and is the sum of \$7500.00; although, as above observed, the property described in this contract encumbrance record is not in all respects identically the same with that described in the new deed tendered by the grantor, which is herewith enclosed. It appears further in this connection that the purchase of the property referred to in the contract encumbrance record was approved by the Controlling Board under date of June 1, 1937.

I am herewith returning to you said abstract of title, the extended and corrected abstract of title above referred to, together with the supplementary files to which your attention has been called herein, the warranty deed herein referred to and discussed, contract encumbrance record No. 1605 and the other files relating to the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.