

110.

APPROVAL, BONDS OF CANAL WINCHESTER VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY—\$150,000.00.

COLUMBUS, OHIO, February 21, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

111.

APPROVAL, BONDS OF BROWN COUNTY—\$12,519.12.

COLUMBUS, OHIO, February 21, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

112.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF JOHN H. VADEN IN NILE TOWNSHIP, SCIOTO COUNTY.

COLUMBUS, OHIO, February 21, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your recent communication, submitting for my examination and approval, an abstract of title, warranty deed, Encumbrance Estimate No. 4774, and Controlling Board certificate, relating to the proposed purchase of a tract of 375 acres of land in Nile Township, Scioto County, Ohio, which tract is owned by one John H. Vaden, and is more particularly described as follows:

“And being the Southeast, Northwest and Southwest Quarters of Ohio State University Lot No. 115.

The said Lot No. 115 O. S. U. being described as follows, to-wit:

‘Beginning at a stake in the S line of O. S. U. Lot No. 9 and NE corner of Lot No. 116;

THENCE, with one line of Lot No. 116, S 280.19 poles to a stake in N line of Lot No. 117;

THENCE, with one line of Lots No. 117 and No. 118 E 286 poles to a stake in the W line of Survey No. 15881 and NE corner to Lot No. 118;

THENCE, with one line of said Survey, N 280.19 poles to a stake;  
 THENCE W 286 poles to the beginning.  
 CONTAINING 500 acres.

EXCEPTING therefrom the Northeast quarter thereof, now owned by the STATE OF OHIO, by purchase from Daisy Wilkins Davis of San Pedro, California."

An examination of the abstract of title submitted shows certain defects in the record title of the northwest quarter of Ohio State University lot No. 115, the same being 125 acres of the 375 acre tract above described. On November 16, 1887, one Adam Alleshouse, being then the owner of record in fee simple of the northwest quarter of said Ohio State University lot No. 115, executed and delivered to one Daniel D. Waggott a warranty deed, whereby he conveyed to said Daniel D. Waggott an undivided one-half interest in the 125 acres of land constituting the northwest quarter of the Ohio State University lot above referred to. Thereafter, on January 31, 1888, said Daniel D. Waggott, by warranty deed, conveyed to one Mary Jones an undivided one-fourth interest in said northwest quarter of lot 115. On November 12, 1904, Daniel D. Waggott and wife, by quit claim deed, conveyed to John H. Vaden all their right, title and interest in and to said northwest quarter. However, there is nothing in the abstract to show that said Adam Alleshouse or said Mary Jones ever conveyed to said John H. Vaden or any other person, their respective rights, title and interest in and to said 125 acre tract of land, constituting the northwest quarter of said lot 115.

It appears, however, that on December 11, 1889, one Mary J. Barton obtained title to the whole of said lot 115, consisting of 500 acres of land, by a delinquent tax deed executed and delivered to her by the auditor of Scioto County. Thereafter, the title of Mary J. Barton thus obtained to the southeast, northwest and southwest quarters of said lot No. 115, passed by mesne conveyances to said John H. Vaden, the present record owner of the same. Under the provisions of Section 2877, Revised Statutes, later carried into the General Code as Section 5721, the delinquent tax deed executed and delivered by the county auditor to Mary J. Barton vested in said grantee a good and valid title, and was prima facie evidence of a perfect fee simple title in and to the whole of said lot No. 115. With respect to said Adam Alleshouse and Mary Jones, the county auditor's deed to Mary J. Barton became an adverse title from the time the same was filed for record on January 20, 1891. The Statute of Limitations has long since run against the right of Adam Alleshouse and Mary Jones to recover the northwest quarter of lot No. 115. Moreover, in no event and at no time, could said Adam Alleshouse and Mary Jones have maintained actions to recover their respective interests in said land without paying their proportionate share of the taxes for the non-payment of which said property, together with the other lands in said lot No. 115 was sold, and likewise the taxes which have since been paid by said Mary J. Barton and her successors in interest on the respective shares of Adam Alleshouse and Mary Jones in the lands here in question. Under the circumstances above noted, I feel that this exception with respect to the apparent outstanding interest of said Adam Alleshouse and Mary Jones can be safely waived.

In addition to the exception above noted, it appears that there is outstanding of record two uncanceled mortgages affecting parts of the above described caption lands. One is a mortgage executed by D. E. Odenbaugh to John McIntyre covering the southwest quarter of said O. S. U. lot No. 115. This mortgage, which is one for the sum of \$1,250.00, was executed June 7, 1882, and filed for record on the twelfth day of said month. The other mortgage referred to is the one executed by William H. Hawkins to Charles Ingraham under date of March 27, 1890. This mortgage, which was filed for record on the twenty-ninth day of said month and year, was for the stated sum of \$4,200.00 and covered the southeast quarter of said lot No. 115. Inasmuch as both of said mortgages have remained unsatisfied and unreleased of record for more than

twenty years after the last due date of the principal sums respectively secured by said mortgages, the lien of the same has terminated, under the provisions of Section 8546-2, General Code, as enacted by an act of the General Assembly, passed March 27, 1925. Moreover, independent of the provisions of the section of the General Code just noted, the Statute of Limitations has long since run against the right of said mortgagees or their successors in interest to recover on said mortgages.

I am, therefore, of the opinion that the title of said John H. Vaden in and to the caption lands should be, and the same hereby is approved, subject only to the lien of any unpaid taxes on said lands levied for the year 1928. The abstract, which was certified under date of January 18, 1929, shows that on said date taxes on said lands in the sum of \$18.75 were paid. Whether this payment covered the whole of the taxes on said lands for the year 1928 or only the taxes for the first half of the year 1928, does not appear. This is a matter which should be ascertained by you before the purchase of the caption lands is consummated.

An examination of Encumbrance Estimate No. 4774 shows that the same has been properly executed and that there are sufficient balances in the appropriate account to pay the purchase price of this land and the certificate of the Controlling Board over the signature of the Secretary shows that, on December 14, 1928, the purchase of the caption lands from the appropriate account was authorized by said board.

I am herewith returning to you said abstract of title, warranty deed, Encumbrance Estimate No. 4774, and Controlling Board certificate. When the corrected deed has been prepared and executed by said John H. Vaden, the same should be submitted to this department for approval.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

113.

BOARD OF CONTROL OF ARMORY—WHEN MEMBERS PERSONALLY RESPONSIBLE—INFRINGEMENT OF MUSIC COPYRIGHT BY PHONOGRAPHIC REPRODUCTION.

*SYLLABUS:*

1. *Members of a board of control of an armory, who conduct, under their own management, entertainments in said armory building, are personally responsible to third persons on account of such entertainments.*

2. *A public performance for profit, where copyright music is reproduced by means of mechanical devices such as perforated music rolls, phonograph discs, records and the like, constitutes an infringement of said copyrights, unless permission is first procured for the reproduction of such music from the owner or owners of the copyrights or their assignees or assignees.*

COLUMBUS, OHIO, February 23, 1929.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your inquiry with reference to the alleged infringement of copyrights on musical compositions by the board of control of the armory at Marion, Ohio.