

224.

DISAPPROVAL—ABSTRACT OF TITLE, ETC. TO LAND IN
ERIE TOWNSHIP, OTTAWA COUNTY, OHIO.

COLUMBUS, OHIO, March 9, 1937.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, certain deeds, contract encumbrance record No. 192 and other files relating to the proposed purchase of a tract of land which is owned of record by one Walter Zoschke, situated in Erie Township, Ottawa County, Ohio, and which is more particularly described as being that part of the east half of the west half of the northeast quarter of Section No. Thirty-three (33), in Town Seven (7) North, Range No. Sixteen (16) East, which lies north of the public highway known as State Route No. Two, containing 7.6 acres of land, be the same more or less, but subject to all legal highways.

Upon examination of the abstract of title, I find that I am unable to approve the title of Walter Zoschke in and to this land for the following reasons, to wit:

1. Whatever title Walter H. Zoschke and his brothers, Albert E. Zoschke, George A. Zoschke and Andrew W. Zoschke, obtained in and to the above described tract of land, they obtained by and under the last will and testament of their mother, Mary I. Zoschke, who died June 7, 1921, leaving Edward Zoschke, her widower, and Walter H. Zoschke and his brothers above named as her only heirs next of kin.

It appears from the abstract that under date of June 2, 1871, one Mary I. Snider acquired title to the whole of the east half of the west half of the northeast quarter of Section 33, Town 7 North, Range 16 East, including the tract of land here in question, by deed executed to her by one John Snider. In this connection, it is noted that the abstracter states that he is advised that Mary I. Snider, the person named as grantee in the deed here referred to, was the daughter of John Snider, the grantor therein, and that thereafter said Mary I. Snider married Edward Zoschke and is one and the same person as Mary I. Zoschke, the mother of Walter H. Zoschke and his brothers above named. This identity of person under the name of Mary I. Snider and Mary I. Zoschke should be set out in the abstract by an affidavit executed by some person or persons who know the facts in regard to this matter. And inasmuch as it appears that by the last will and testament of Mary I. Zoschke the property here in question was devised to Edward Zoschke for life with remainder to her children above named, it is suggested

that said affidavit likewise include a statement that Edward Zoschke is dead. This fact appears by way of recital in the application for the probate of the will of Mary I. Zoschke, but nevertheless in conformity to the usual requirement in matters of this kind this fact should be likewise proven by affidavit.

2. Walter H. Zoschke obtained his present exclusive record title to this property by a quit claim deed executed and delivered to him by his brothers Albert E. Zoschke and George A. Zoschke and their respective wives and by a guardian's deed which purports to convey to him the undivided interest of his brother Andrew W. Zoschke in and to a tract of land which includes the smaller tract of land here in question. Apparently, this deed was executed pursuant to proceedings for this purpose in the Probate Court of Ottawa County. These proceedings were had subsequent to the date of the certification of the abstract of title submitted to me and this abstract does not, of course, set out the proceedings relating to the sale of the interest of Andrew W. Zoschke, an insane person, to Walter H. Zoschke. These proceedings will have to be included in the abstract before I am authorized to approve the title of Walter H. Zoschke so far as the original undivided interest of Andrew W. Zoschke in and to the property is concerned.

3. Inasmuch as, apparently, some cloud was cast upon the title to a part of the property here in question by a tax title deed executed on or about the year 1903 to one A. F. Allyn and by a quit claim deed executed by him to Mrs. F. A. Allyn in the year 1934 in which there is therein described as a part of the lands conveyed a tract of 43.19 acres of land off of the north end of the north half of the northeast quarter of Section 33, it is suggested that in the affidavit first above referred to there be included a full statement with respect to the fact that Mary I. Zoschke, Edward Zoschke and their successors in title have owned and held this property openly and adversely without any claim having been made thereto by the Allyns above referred to or by anyone else.

For the reasons above noted, I am herewith returning to you without approval the abstract of title, deeds, contract encumbrance record No. 192 and other files relating to the proposed purchase of the above tract of land with the suggestion that when the record title to this property has been corrected by the other information herein requested said abstract of title and other files be again submitted for my consideration.

Respectfully,

HERBERT S. DUFFY,

Attorney General