

this subject, namely, that the eligibility of the claimant depends on his or her having served as a member of a federal military organization, is amply satisfied in this case.

Accordingly, it is my opinion that a nurse who has served in the army of the United States and has been honorably discharged therefrom is entitled to benefits under the provisions of Sections 2930 to 2941, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2806.

DISAPPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, CONTRACT, PROPOSED PURCHASE, TRACT OF LAND, UNION TOWNSHIP, LICKING COUNTY, OHIO, SECTION 15, TOWNSHIP 17 NORTH, RANGE 18 WEST, REFUGEE TRACT, FOR CONSTRUCTION AND MAINTENANCE OF FEDERAL FISH HATCHERY.

COLUMBUS, OHIO, August 8, 1938.

HON. I. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 23 and other files relating to the proposed purchase by the Ohio Conservation Council for and in the name of the State of Ohio of a tract of land which is owned of record by one Lena M. Hill in Union Township, Licking County, Ohio; which tract of land is situated in Section 15, Township 17 North, Range 18 West, Refugee Tract, and is more particularly described as follows:

Situated in The State of Ohio, Licking County, Union Township, Range 18 West, Township 17 North, Refugee Tract, Section 15.

Beginning at the Southwest corner of the Northeast quarter of Section Number 15: Thence North 3 degrees 21 minutes East 368.58 feet: Thence North 85 degrees 36 minutes West 1809.57 feet to a corner 15 feet out from the foot of slope of the tow path road: Thence North 14 degrees 32 minutes East 1705.46 feet parallel to the Canal road: Thence North 28 degrees 05 minutes East 557.40 feet parallel to the

Canal road: Thence South 86 degrees 15 minutes East 2291.00 feet parallel to and 100 feet South of the line between Section 15 and Section 10: Thence North 3 degrees 45 minutes East 100.00 feet to a corner stone: Thence South 86 degrees 15 minutes East 1247.91 feet along the line between Section 15 and Section 10 to an iron pin: Thence South 3 degrees 18 minutes West 2664.52 feet to the half section line of Section 15: Thence North 86 degrees 18 minutes West 2295.52 feet along the half section line of Section 15 to the place of beginning.

The above tract of land containing 217.39 acres more or less.

Upon examination of the abstract of title submitted to me, the last continuation of which abstract is certified by the abstracter under date of June 29, 1938, I find that said Lena M. Hill has a good indefeasible fee simple title to the above described tract of land and that she owns and holds the same free and clear of all encumbrances except the taxes on the property for the last half of the year 1937 and the undetermined taxes on this property for the year 1938. The tract of land here under consideration which is to be conveyed to the State of Ohio by said Lena M. Hill consists of 217.39 acres of land which apparently is a part of a larger acreage (224.25 A.) of land which said Lena M. Hill owns and holds in Section 15 of said township and range and upon which the aggregate amount of taxes for the last half of the year 1937 is the sum of \$39.51. Provisions should be made for the segregation of the taxes on and with respect to the above described tract of land which is to be conveyed to the State of Ohio and arrangements should be made for the payment of the same before the transaction for the purchase of this property is closed.

As a further possible encumbrance upon this property, it is noted that under date of September 6, 1927, said Lena M. Hill, her husband, Frank M. Hill, joining with her in the instrument, leased and demised to The Ohio Telephone and Telegraph Company "the right, privilege and authority to construct, operate and maintain lines of telegraph and telephone consisting of poles, wires, etc., over, across and under property which we own in Section 16, Union Township, Licking County, Ohio, and along road." Although in this lease the property covered thereby is referred to as being in Section 16, Union Township, Licking County, Ohio, it is reasonably certain that the property intended to be leased for the purpose above stated is the above described and other property which said Lena M. Hill owned and held in Section 15 of said township and county. I am not advised by any information con-

tained in the abstract of title or in any of the other files submitted to me what, if anything, has been done by the Ohio Telephone and Telegraph Company in the way of the construction of any telephone or telegraph line or lines in or over said property and along any road adjoining the same. Whether such telephone or telegraph lines have been constructed and whether the same will in any material way interfere with the use which will be made of this property is a matter for your determination.

Upon examination of the warranty deed which has been tendered by Lena M. Hill, I find that the same has been properly executed and acknowledged by said grantor and by Frank M. Hill, her husband, who thereby releases his right of dower in the above described premises. I further find that the form of this deed is such that the same is legally sufficient to convey the above described property to the State of Ohio by fee simple title with a covenant of warranty that the property is free and clear of all encumbrances whatsoever.

Although, as above indicated, I am of the opinion that this deed as to its form and execution is legally sufficient for the purpose of conveying this property to the State of Ohio, it is suggested that before closing the transaction for the purchase of this property this deed should be returned to the Notary with instructions to incorporate in the acknowledgment clause the word "Ohio" after the words "The State of" and to insert therein below the signature of the Notary Public the words "Notary Public in and for Delaware County, Ohio."

Upon examination of contract encumbrance record No. 23, which has been submitted as a part of the files relating to the purchase of this property, I find that this contract encumbrance record has been properly executed and that there is shown thereby in the properly transferred appropriation account to the credit of the Department of Agriculture, Division of Conservation, a sufficient balance to pay the purchase price of this property, which purchase price is the sum of \$14,288.54. It likewise appears from this contract encumbrance record, as well as from a certificate over the signature of the President of the Controlling Board, that said Board has approved the purchase of this property pursuant to the authority conferred upon such Controlling Board by Senate Bill No. 369.

It further appears from a certified copy of the pertinent part of the minutes of the meeting of the Ohio Conservation Council held under date of June 22, 1938, that the purchase and acquisition of this tract of land was authorized and provided for by said Conservation Council; and that the purpose of such acquisition is that this property is to be used for the establishment, construction and maintenance thereon of a federal fish hatchery. And to this end, the Conservation Commissioner is instructed in and by the resolution of the Conservation Council adopted

at the meeting above referred to, "to obtain title to such area, then effect transfer of title to the Federal Bureau of Fisheries."

The action of the Conservation Council in providing for the purchase of the above described tract of land was presumably taken under the authority of Section 1435-1, General Code, which, after providing for the authority of the Conservation Council to acquire lands for various purposes, further provides as follows:

"It may also acquire by gift, lease or purchase suitable land for the purpose of establishing state fish hatcheries and may erect thereon such buildings or structures as it shall deem necessary. The title or lease to any and all such lands shall be taken by the division of conservation in the name of the State of Ohio, and when so acquired the entire supervision of such lands shall be under the division of conservation."

Although this section of the General Code confers ample authority upon the Conservation Council to acquire lands upon which to construct, maintain and operate fish hatcheries under the supervision of the Division of Conservation, there is no existing statutory authority under which the Conservation Council may acquire lands for the use of the federal government. Moreover, even if this property were acquired by the Conservation Council under the authority of the section of the General Code above referred to and for a purpose properly within the purview of said section, the title to such property could not be conveyed to the United States of America or to any agency of the federal government without the authority of an act of the legislature for this purpose.

In this connection, it is noted that by Section 1435-1a, General Code, enacted by the Act of July 23, 1936, 116 O. L., Part II, 258, it is provided that "authority is hereby granted to the United States commissioner of fisheries and his duly authorized agents to establish fish hatcheries in Ohio, and to operate and maintain them; to acquire by lease, gift or purchase such lands and other equipment which may be necessary for such purpose." However, neither this section of the General Code nor any other statutory provision of this State authorizes the Ohio Conservation Council to acquire lands for the federal government or any of its agencies for fish hatchery purposes; neither is the Conservation Council authorized to acquire lands for and in the name of the State of Ohio for the purpose of thereafter conveying such lands and the title thereto to the federal government or its agencies for this purpose. As noted from the provisions of Section 1435-1, General Code, above quoted, the Conservation Council is authorized to acquire suitable land by purchase or otherwise "for the purpose of establishing state fish

hatcheries." By the further provisions of this section, it is required that the title of any and all such lands acquired by the Conservation Council for this purpose shall be taken by the Division of Conservation in the name of the State of Ohio and that "when so acquired the entire supervision of such lands shall be under the division of conservation."

Inasmuch as in and by the resolution adopted by the Conservation Council providing for the purchase of the lands here in question the declared purpose of the Conservation Council is to acquire these lands for the purpose of thereafter transferring such lands and the title thereto to the United State Commissioner of Fisheries and since, therefore, it further appears that these lands are not being acquired for the purpose of establishing thereon a state fish hatchery under the supervision of the Division of Conservation, I do not feel that I havè any discretion to do otherwise than to disapprove the purchase of this property for the purpose indicated in the resolution of the Conservation Council.

I have indicated my views as to the title to the above described property and as to the legal sufficiency of the warranty deed and other files submitted to me in connection with the purchase of this property. This has been done to the end that if the Conservation Council sees fit to adopt a resolution providing for the purchase of this property under the authority of Section 1435-1, General Code, and in conformity with its provisions and for a purpose therein contemplated and provided for, the opinion hereinabove expressed as to the title of this property in the hands of its present owner and as to the deed tendered by such owner and other files submitted, may serve your purposes in connection with the further attention of your department in closing the transaction for the purchase of this land.

On the situation here presented by the resolution of the Conservation Council indicating the purpose for which these lands are being acquired, I am returning to you without approval all of the files which you submitted for my consideration.

Respectfully,

HERBERT S. DUFFY,
Attorney General.