

school building bonds in the aggregate amount of \$80,000, dated June 1, 1921, bearing interest at the rate of 6% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, AND
CONTRACT ENCUMBRANCE RECORD COVERING LAND
IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, May 24, 1937.

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

DEAR SIR: This is to acknowledge receipt of your communication, with which you submit for my examination and approval an abstract of title, warranty deed and contract encumbrance record No. 44, relating to the proposed purchase by the State of Ohio for the use of the Division of Forestry in your department of a tract of land which is owned of record by Floyd Slyh and Fannie Slyh in Nile Township, Scioto County, Ohio. This tract of land is located in Virginia Military Survey No. 15833 and is more particularly described by metes and bounds as follows:

Beginning at a concrete monument N.W. corner of this tract and N. E. corner of a 500 acre tract formerly owned by Olive Wickerham; thence S. $87^{\circ} 08\frac{1}{2}'$ E. 5887.23 feet following generally the South slope of the hill and passing the Southeast corner of land of the State of Ohio at 3994.48 feet to a stake in the line of Survey No. 15792 and also in line of a 300 acre tract of the State of Ohio; thence South $42^{\circ} 43\frac{1}{2}'$ W. 2067.61 feet with line of Survey No. 15792, crossing Barber's Run and up the hill passing corner of 300 acre tract of the State of Ohio at 2002 feet to a stake in the gap; thence South $24^{\circ} 05\frac{1}{2}'$ W. 918.64 feet following the line of Survey No.

15792 down the hill to a stake; thence South $50^{\circ} 5\frac{1}{2}'$ W. 2234.87 feet following line of Survey No. 15792, crossing two hollows and a ridge to a stake on top of the second ridge; thence South $24^{\circ} 38'$ W. 165.58 feet following line of Survey No. 15792 down the hill to a concrete boundary marker, the N. E. corner of a 130 acre tract of the State of Ohio; thence with the North line thereof, N. $86^{\circ} 05'$ W. 2681.85 feet to a concrete boundary marker on the hillside, N. W. corner of the 130 acre tract of the State of Ohio; thence N. $5^{\circ} 34\frac{1}{2}'$ E. 4028.64 feet to the beginning, containing 408.08 acres.

It appears from the abstract submitted that this description of the tract of land here in question follows the lines of a recent survey of the property made by or under the supervision of the Division of Forestry of the Ohio Agricultural Experiment Station. By reason of the fact that I do not have at hand any plat of this property made with reference to the original survey in which the property is located and with reference to contiguous properties, I am unable to identify the property as above described with that conveyed to Floyd Slyh and Fannie Slyh by deed of conveyance from George W. Bull under date of January 11, 1926, the description of which property as thus conveyed is set out on page two of the abstract. In the description of this property as the same is set out in the deed from George W. Bull to Floyd Slyh and Fannie Slyh, it is stated that the tract of land thereby conveyed is 365 acres of land; and according to the description of the property following the survey made by the Ohio Division of Forestry this tract of land contains 408.08 acres of land. In this connection, it is noted that the option that was executed by Floyd Slyh and Fannie Slyh to the Board of Control of the Ohio Agricultural Experiment Station for the purchase of this land likewise recites that the tract consists of 365 acres of land. In this situation, I am inclined to the view that Floyd Slyh and Fannie Slyh in and by the executed deed which has been submitted to me are conveying to the State of Ohio the identical tract of land which was conveyed to them by George W. Bull, and that the reason for the apparent discrepancy in acreage above noted is that the recent survey made by the Division of Forestry affirmatively showed that this tract of land contained a larger acreage of land than that indicated by the former descriptions in and by which this property passed by mesne conveyances to Floyd Slyh and Fannie Slyh. However, the question of the exact identity of the tract of land which Floyd Slyh and Fannie Slyh are conveying to the State of Ohio according to the description of the property set out in the deed executed by them and tendered to the State with that conveyed to them by George W. Bull

is a matter for the determination of the Division of Forestry of your department. And although I have no doubt but that the determination of the identity of this tract of land by the different descriptions above referred to has already been made by the Division of Forestry of your department to its satisfaction, I deemed it to be my duty to call your attention to the different descriptions of this property above noted and to the apparent discrepancy in the acreage of the tract of land according to said several descriptions, leaving to the Division of Forestry the responsibility with respect to the question of the exact identity of the tract of land here in question conveyed to the State of Ohio with that now owned by Floyd Slyh and Fannie Slyh.

With these observations and assuming as I do that the tract of land above described which is to be conveyed to the State of Ohio by said description, is the same identical tract of land which is now owned of record by Floyd Slyh and Fannie Slyh, I find that Floyd Slyh and Fannie Slyh have a good and indefeasible fee simple title to this tract of land and that they own and hold the same free and clear of all encumbrances whatsoever except the undetermined taxes on the property for the year 1937. In view of the fact that the option for the purchase of this tract of land was taken by the Board of Control of the Ohio Agricultural Experiment Station more than a year ago and of the further fact that the deed tendered to the State by Floyd Slyh and Fannie Slyh was executed by them under date of April 3, 1937, prior to the date when the lien of the taxes on this land for the year 1937 attached to the property, it may be doubted whether it was intended that Floyd Slyh and Fannie Slyh were to be liable for the payment of the 1937 taxes on the property.

Upon examination of the warranty deed tendered by Floyd Slyh and Fannie Slyh, I find that said deed has been properly executed and acknowledged by said grantors and 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 free and clear of the respective inchoate dower interest of each of the said grantors in the undivided estate of the other in and to this land. This deed contains the covenant that the premises thereby conveyed are free and clear of all encumbrances whatsoever. As above indicated, the grantors in and by this covenant may have intended that the same should speak from the date of the execution of the deed, that is, before the lien for the 1937 taxes attached to the property. This, however, is a matter for adjustment by and between your department and said grantors.

It is noted in this connection that both in the granting clause and in the habendum clause of this deed it appears that the conveyance is to the State of Ohio "for the use of the Ohio Agricultural Experiment

Station." Conformable to the general rule and requirement of this office with respect to deeds conveying property to the State of Ohio, the above quoted provision with respect to the use of the property conveyed should have been eliminated and the deed should have been to the State of Ohio without any reference to the department or division of the state government for whose use the property is purchased and without limitation as to the use that the State may make of the property. However, I am inclined to the view that this provision or recital in the deed is surplusage; and in this view it is my opinion that this objection may be safely waived so far as this deed is concerned.

Upon examination of contract encumbrance record No. 44, I find that the same has been properly executed and that there is shown thereby a sufficient balance, otherwise unencumbered, to pay the purchase price of this property which is the sum of \$244.48. It likewise appears from said contract encumbrance record that the purchase price of this property is to be out of an appropriation of moneys to the credit of the Division of Forestry of the Ohio Agricultural Experiment Station set up as a rotary fund to the credit of the Division of Forestry under House Bill No. 571 enacted by the 91st General Assembly under date of December 20, 1935, 116 O.L., 68, and that by reason of this fact the approval of the Controlling Board to the purchase of this property is not necessary. I am hereby approving said abstract of title, warranty deed and contract encumbrance record and the same are returned to you herewith for your further attention in the matter of issuing a proper voucher covering the purchase price of this property.

Respectfully,

HERBERT S. DUFFY,

Attorney General.