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APPROVAL—MEMORANDA IN CONNECTION WITH VARIOUS PARCELS OF LAND FOR HIGHWAY PURPOSES FROM THE TOLEDO, FOSTORIA & FINDLAY TRACTION COMPANY.

COLUMBUS, OHIO, June 11, 1934.

HON. O. W. MERRELL, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration additional memoranda in connection with the various parcels of land which you contemplate acquiring for highway purposes from the Toledo, Fostoria & Findlay Traction Co., which parcels were not reported favorably in my opinion No. 2242, rendered January 30, 1934.

I have examined this supplemental material and I assume for the purpose of this opinion as I did in my prior opinion, that the grantors of the grantee, the Toledo, Fostoria & Findlay Traction Co., had a good and indefeasible estate in fee simple to the property described in such deeds, free from any defects or encumbrances. I am also assuming for the purpose of this opinion that the five-foot strip along the highway in parcels No. 2, No. 4, No. 28, No. 37 and No. 38 to be acquired by the Highway Department for road purposes is not immediately adjoining the land on which fences and drainage must be maintained.

I find the defects in the deeds mentioned in my opinion No. 2242, referred to supra, have all been cleared up to my satisfaction by virtue of the information furnished by the real estate department of the Central Ohio Light & Power Co., which information is attached to your request for my opinion, with the following exceptions:

Parcels No. 1 and 10. Inasmuch as the Toledo, Fostoria & Findlay Traction Co. can convey no legal title to these two parcels to the State, the title, if desired, should be acquired from the present owners. I would also advise a quit claim deed conveying all the right, title and interest of the Toledo, Fostoria & Findlay Traction Co. in these particular parcels which you contemplate acquiring.

Parcel No. 8. Inasmuch as the land contract from John P. Mosier to Theo. Wentz, trustee, was made a part of the deed from John P. Mosier and Maria F. Mosier, his wife, to the Toledo, Fostoria & Findlay Traction Co., and inasmuch as such land contract contains a fencing agreement, I assume that you are also in this case, like in the case of Parcels Nos. 2, 4, 28, 37 and 38, contemplating acquiring only a five-foot strip which strip will not immediately adjoin the land on which the fence must be maintained.

On the basis of the assumptions I have made for the purposes of this opinion and with the exceptions I have noted, it is my view that the Toledo, Fostoria & Findlay Traction Co., or its successors, could convey a good fee title to the property therein described.

Respectfully,

JOHN W. BRICKER,
Attorney General.