

provision therein such as is set out in the third branch of your inquiry, may lawfully provide for the payment of pensions to the employes of the municipality, other than those in the police and fire departments, by arranging with an insurance company for the payment of these pensions, and the payment from public funds of a proper premium therefor.

I am therefore of the opinion that each of the questions submitted by you should be answered in the affirmative.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3384.

APPROVAL, ABSTRACT OF TITLE TO LAND OF THE NEW YORK
CENTRAL RAILROAD COMPANY, IN PORTAGE TOWNSHIP,
OTTAWA COUNTY, OHIO.

COLUMBUS, OHIO, June 30, 1931.

HON. SCOTT GRAVES, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—There was legally received at this office from Graves and Duff, attorneys at law at Port Clinton, Ohio, a corrected abstract of title of a part of Section 31, Township 7, Range 17, in Portage Township, Ottawa County, Ohio, which is owned of record by The New York Central Railroad Company, and was formerly used by it for railroad right of way purposes. The property here in question, which is to be purchased by the board of county commissioners of Ottawa County, Ohio, for the purpose of being used by the state highway department in the re-location of State Highway No. 2 in and through Port Clinton, is more particularly described as to metes and bounds with respect to the particular parcels thereof in a deed form of the deed to be executed by and on behalf of The New York Central Railroad Company conveying this property to the board of county commissioners; which deed form, as I am advised, has heretofore been submitted to you as well as to this office.

Upon examination of the original abstract of title submitted, I was of the opinion that The New York Central Railroad Company had a good merchantable record title to most of the property here in question. As to a part of said property, however, there was some question as to whether the railroad company had any title to the same otherwise than by prescriptive right for railroad purposes; and for this reason I did not feel like approving the purchase of said property, and declined to do so unless the railroad company would execute to the board of county commissioners a deed with full covenants of warranty. This the railroad company did not seem willing to do; and for this reason, the purchase of this property was not closed upon the original abstract submitted.

The corrected abstract of title submitted sets out quite fully certain proceedings in the Court of Common Pleas of Ottawa County, Ohio, filed therein by The New York Central Railroad Company, the object of which was to quiet the title of said railroad company in and to the property here in question (as well as other property) against the claims of all persons who, as shown by the abstract, might by any possibility have any claim against this property. By a judgment

and decree made and entered by said court on May 6, 1931, the title of the railroad company in and to said property was quieted, and thereby established.

Inasmuch as said proceedings appear to be in all respects regular, and the time within which an appeal is said cause and proceedings might have been entered has now elapsed, I am of the opinion that The New York Central Railroad Company has a good and indefeasible fee simple title to all of the property here in question which it proposes to convey to the board of county commissioners of Ottawa County, Ohio; and that said railroad company owns and holds said property, free and clear of all incumbrances, except the lien of two certain mortgages. The first of the mortgages here referred to was one executed by The Lake Shore and Michigan Southern Railway Company, predecessor in title to The New York Central Railroad Company, to the United States Trust Company, executed on or about the month of June, 1897, to secure the payment of bonds issued by said railroad company in the sum of \$50,000,000.00. The abstract does not indicate the maturity date of the bonds secured by this mortgage; and for this reason I am unable to know whether the lien of said mortgage has been barred by the provisions of section 8546-2, General Code, or not.

Another mortgage appearing in the abstract, which does not appear to have been canceled of record, was one executed by The New York Central Railroad Company to The Bankers Trust Company, trustee, on or about the month of June, 1915, upon all the properties owned by said railroad company, including the property here under investigation. The consideration for this mortgage, as stated in the abstract, is the sum of \$90,578,400.00; and I assume that the purpose of said mortgage was to secure bonds issued by The New York Central Railroad Company in this amount. In the certificate of the abstractor's, which bears the date of June 24, 1931, it is stated that the property here under investigation will be released from the operation of said mortgages whenever the county takes said premises over for highway purposes.

In this connection it is to be observed that if the deed which is executed by the railroad company conveying this property to the board of county commissioners is a quit claim deed, said board will have to rely upon the good faith of the railroad company with respect to the matter of the cancellation of such mortgages. From my experience with this and other railroad companies in matters of this kind, I am not disposed to question the good faith of the railroad company with respect to a promise of this kind.

On the contrary it is a common practice for the state and political subdivisions thereof in buying property of railroad companies, which is subject to the lien of underlying mortgages of this kind, to depend upon the railroad companies to secure releases of such mortgages with respect to the property conveyed, which is always done in due course.

I am herewith returning said corrected abstract of title, with my approval, subject to the exceptions above noted. It is suggested that upon receipt of this opinion you get in touch with Mr. E. E. Pettibone, Assistant General Land Agent of The New York Central Railroad Company at Cleveland, Ohio, and have him forward to you the deed to be executed by the railroad company conveying the property here in question to the board of county commissioners. If on receipt of said deed you desire me to inspect and approve the same, you will forward the deed to me for this purpose.

Respectfully,

GILBERT BETTMAN,
Attorney General.