

In an opinion appearing in Opinions of the Attorney General for the year 1923, Volume I, page 245, it was held in the second branch of the syllabus as follows:

"2. When a vacancy occurs in the office of member of the Public Utilities Commission during a session of the senate, the governor is without authority to make a recess appointment, and a person who would be appointed by the governor under such circumstances could not lawfully assume the office. It is only in cases when a vacancy occurs when the senate is not in session, that a valid recess appointment may be made under Section 12 of the General Code."

I have considered carefully the reasoning by which such conclusion was reached and concur therein.

Therefore, in specific answer to your question, it is my opinion that Mr. John R. Williams who has continued to exercise the duties of his office as a member of the board of trustees of Kent State University after the expiration of the term of his original appointment, can lawfully continue to serve as a member of such board of trustees until his successor is duly appointed and qualified.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2752.

APPROVAL, ABSTRACT OF TITLE AND OTHER INSTRUMENTS, STATE OF OHIO THROUGH PRESIDENT AND TRUSTEES OF OHIO UNIVERSITY, ATHENS, OHIO, PROPOSED PURCHASE FROM MINNIE B. HOTTEL, JENNIE ANNIN, LENA A. POWERS, BESSIE DOHENY, EDWARD J. DOHENY, ELIZA GRAHAM AND GROVER C. GRAHAM, DESCRIBED PARCELS OF LAND, CITY OF ATHENS, ATHENS COUNTY, OHIO, PURCHASE PRICE, \$20,000.00, USE WITHIN PURVIEW OF SECTION 7931-2 G. C.

COLUMBUS, OHIO, July 23, 1938.

MR. GEORGE C. PARKS, *Secretary, Board of Trustees, Ohio University, Athens, Ohio.*

DEAR SIR: There have been submitted for my examination and approval an abstract of title and warranty deed relating to the proposed

purchase by the President and Trustees of Ohio University of certain parcels of land which are owned of record by Minnie B. Hottel, Jennie Annin, Lena A. Powers, Bessie Doheny, Edward J. Doheny, Eliza Graham and Grover C. Graham as tenants in common by undivided interests; which parcels of land are situated in the City of Athens, Athens County, Ohio, and which are more particularly described as follows:

Beginning at the southeast corner of In-Lot No. 60 in said village; thence North on the east line of said lot to the middle of the partition on the south side of the north hall of the brick building standing on said lot; thence west with the middle line of said partition to a point 40 feet east of the west line of said lot; thence south to the south line of said lot; thence east with the south line of said lot to the place of beginning. Reserving and excepting to the owners of the other subdivision of said lot No. 60, their heirs and assigns forever, the right-of-way for all purposes of an alley six feet off the west end of the above described premises.

Second. Also the right-of-way for all the purposes of an alley over and along the following described tract: Beginning at a point 36 feet east of the south west corner of said Lot No. 60; thence east on the south line of said Lot No. 60 ten feet; thence north to a point 35 feet south of the north line of said lot; thence west ten feet; thence south to the south line of Lot to the place of beginning.

Upon examination of the abstract of title submitted to me, I am of the opinion that the above named persons have a good merchantable title to this property and that upon delivery by them of the warranty deed, hereinafter referred to, the President and Trustees of Ohio University, their successors and assigns, will, in their corporate capacity, have a good and indefeasible fee simple title to the above described parcels of land; and that the title thus conveyed to the President and Trustees of Ohio University will be free and clear of all encumbrances except the unpaid taxes on this property which, apparently, are the taxes on the property for the last half of the year 1937, in an amount not stated in the abstract, and the taxes on this property for the year 1938, the amount of which has not been determined.

Upon examination of the warranty deed tendered by the above named persons as grantors in the deed, I find that said deed has been properly executed and acknowledged by said grantors and by their several and respective spouses who each have joined in the granting clause of said deed and have thereby released their respective dower rights and

interests in and to this property. I further find that the form of this deed is such that the same is legally sufficient to convey this property to the President and Trustees of Ohio University by such title that upon the delivery and acceptance of the deed the President and Trustees of Ohio University will have and hold a good and indefeasible fee simple title to the above described property.

In this connection, it is suggested, however, that the grantors in this deed, acting through some person authorized to do so, change the word "heirs," as the same is found in the granting and habendum clauses of this deed, to the word "successors"; and that this should be the form of the deed when the same, together with the other files, is presented to you and the other authorized officials of Ohio University for the issuance of the check or warrant covering the purchase price of this property.

In this connection, it is noted that the purchase price of this property, which in the deed is stated to be the sum of \$20,000.00, is to be paid out of funds in the hands of the President and Trustees of Ohio University as a body corporate, which have been derived from the operation of dormitories under its control as authorized and provided for by Section 7931-2, General Code, which section, in so far as the same applies to the facts in this case, provides:

"That the body corporate known as the president and trustees of the Ohio University is hereby authorized to purchase a site therefor and to construct, equip, maintain, and operate thereupon or upon sites within the campus of the Ohio university as it may designate therefor, buildings to be used as dormitories for students and members of the faculty and servants of the Ohio university, and to pay for same out of any funds in its possession derived from the operation of any dormitories under its control, or out of funds borrowed therefor."

Inasmuch as this property is being acquired under the authority of this section of the General Code, I assume that the property on its acquisition will be used for some purpose within the authority of this section.

I am herewith returning to you said abstract of title, warranty deed and other files submitted to me in connection with this matter.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*