

poration, if such street be a continuation of a state or county road extending into or through such municipal corporation, or forms a continuous road improvement, in which case the consent of the council of said municipal corporation, evidenced by the proper legislation of council, must be first obtained. If a street within the limits of a municipal corporation be not a continuation of a state or county road, or does not form a continuous road improvement, county commissioners are without authority to lay out and establish such street."

Thus it will be seen that the right to establish a county road within the limits of a municipal corporation was recognized to exist in a proper case. In the present instance the road forms a link between two state highways. It thus may properly be said to be a continuation of each of said state roads and is of importance from the standpoint of through traffic and general utility. That is to say, in the present instance I believe it to be within the power of the county commissioners, with the consent of the municipality, to establish Cedar Street as a county road, since it is a continuation of the Youngstown and Pittsburg state road connecting with the Youngstown and Lowellville road which extends over East Federal Street. I accordingly feel that there is nothing in my previous opinion inconsistent with the right of the commissioners to act in the present case.

In view of the foregoing, and answering your question specifically, I am of the opinion that the county commissioners of Mahoning County have the authority, with the consent of council, to lay out and establish a county road on Cedar Street in the City of Youngstown and thereafter to construct a bridge across the Mahoning River on such road to take the place of the bridge now existing thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2322.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CLAIR H. HAUN, IN
NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, July 6, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and opinion an abstract of title and a warranty deed covering two separate tracts of land, one of fifty acres and the other of 354.37 acres in Niles Township, Scioto County, Ohio, of which one Clair H. Haun is the owner of record.

An examination of the abstract of title submitted shows that both of these tracts of land are within the confines of original surveys numbers 15037, 15354 and 15730 in the Virginia Military District, made and entered by one David F. Heaton under date of October 17, 1851. The abstract discloses that no patents were ever issued to said David F. Heaton on these surveys, and there is nothing in said abstract to show that said surveys were ever returned to the land office for patent.

In the case of *Coan vs. Flagg*, 123 U. S. 117, it was held that it was essential to the vesting of any interest under an entry and survey within the Virginia Military Land District, made prior to January 1, 1852, that the survey should be returned to

the Commissioner of the General Land Office at Washington for patent on or before that date; and that the failure to do so discharged the land from any claim founded on such location and survey.

On the state of facts disclosed by the abstract it would seem that title to the lands here in question passed to the State of Ohio, under the Act of Congress approved February 18, 1871, and that thereafter the title to said lands passed under acts of the General Assembly of said state to The Ohio Agricultural and Mechanical College and to the Ohio State University, its successor in name. Moreover, in this connection it appears that since the original surveys here in question were never returned to the land office for patent they were not within the protection of the second section of the Act of Congress, approved May 27, 1880, which provided "that all legal surveys returned to the land office on or before March 3, 1857, on entries made on or before January 1, 1852, and founded upon unsatisfied Virginia Military Continental Warrants, are hereby declared valid."

By mense conveyances from the heirs of said David F. Heaton and the devisees under his last will and testament, one N. A. Brokaw on February 10, 1910, became the owner of record of both of the above mentioned tracts of land.

On March 5, 1913, a quit claim deed was executed on behalf of the Ohio State University by one Walter J. Sears, President of the Board of Trustees, to said N. A. Brokaw, the intention of which apparently was to convey to said N. A. Brokaw, and to his heirs and assigns forever, all of the right, title and interest of the Ohio State University to the fifty acre tract of land above mentioned and referred to. However, in certain recitals in said deed set out in the abstract it appears that the Board of Trustees of Ohio State University sold and conveyed said tract of land to one Edward Cunningham, his heirs and assigns forever. Manifestly, there is some error in this transaction and it is all together possible that the recitals in said quit claim deed from the Ohio State University have not been correctly abstracted. However this may be, the abstract does not show any quit claim deed from the Ohio State University to said N. A. Brokaw or to any of his successors in the record title to the second tract of land above mentioned, remising and releasing or otherwise conveying the interest of the Ohio State University in said second tract of land.

On the facts above noted it would seem that a quit claim deed from the Ohio State University conveying its interest in the second tract of land above mentioned was quite as necessary as was its quit claim deed in conveying its interest in the first tract of land above mentioned.

My examination of this abstract discloses certain other defects of a more or less minor nature, but the objections above noted are so fundamental on the abstract as submitted to me that I feel that I have no discretion to do otherwise than to disapprove the abstract of title and to return the same to you for transmission to Mr. Haun or the agent representing him in this matter.

With said abstract of title I herewith return the warranty deed signed by said Clair H. Haun and wife and Encumbrance Estimate No. 3398. The files which you transmitted to me with said abstract did not contain any certificate showing the approval by the Board of Control of the purchase of said lands.

Respectfully,
EDWARD C. TURNER,
Attorney General.