

It is my opinion, therefore, that in the absence of statutory authority for the purchase of mortgage bonds as such by your board, this authority must be denied. I accordingly advise you not to purchase these bonds.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3559.

APPROVAL, ABSTRACT OF TITLE TO LAND OF HOWARD W. STRONG,
IN VINTON COUNTY, OHIO.

COLUMBUS, OHIO, September 11, 1931.

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

DEAR SIR:—I am in receipt of your letter submitting for my analysis and approval an abstract of title, copy of real estate option, authority of controlling board, encumbrance estimate No. 1777, tax receipts for the year 1929 and the first half of 1930 and copy of deed, covering the proposed purchase of 3,393 acres of land, more or less, in Vinton County, Ohio, from Edward W. Strong, said land being comprised partially of lots and land in Zaleski, Ohio.

In this opinion I am considering only the land described in the draft of the proposed deed by Mr. Strong to the State of Ohio which, hereafter, shall be referred to as the "State land"; for I find that the caption land in the abstract covers more land than is described in the deed to the State, some of which, as the 25th tract in the caption of the abstract, Mr. Strong does not own in fee simple.

The proposed deed to the State first lists over a hundred lots in the town of Zaleski, and then enumerates 27 tracts of land. Practically all of this land was owned at one time by The Zaleski Company and was conveyed by George Minister, receiver of said company, to William T. McClintick and Edward W. Strong and the survivors of them and to the heirs and assigns of such survivors, by a deed dated October 31, 1895, (page 847, abstract). Edward W. Strong succeeded to the full ownership of said property, formerly belonging to The Zaleski Company upon the death of Mr. McClintick in 1903. Two of the tracts mentioned in the State deed, being the 22d and the 27th tracts therein, did not come into Mr. Strong's hands by way of the deed of The Zaleski Company's receiver. With the exception of matters hereinafter more fully pointed out, I find that Mr. Strong has a good and merchantable fee simple title to the State land.

Title is approved of all of the lots mentioned in the State deed. Lot No. 11, it is true, was omitted in said deed of The Zaleski Company's receiver (p. 850, abstract), but this was probably due to inadvertence. The record shows that The Zaleski Company owned said lot, that it was listed as part of said company's property in the receivership proceedings (p. 737, abstract) and that William T. McClintick and Edward W. Strong bid it in at the receiver's sale (pp. 827-828, abstract). More than thirty-five years have elapsed since that time, and Mr. Strong's equitable title together with the rights which intervening years have fixed in him would be sufficient to defeat any claim which might hereafter be advanced because of the irregularity mentioned.

From lot No. 386, the State deed excepts a parcel conveyed to the Board of Education of the Village of Zaleski by deed dated November 12, 1925. I do not find this deed in the abstract. In order to make the exact amount of land which the State is acquiring a matter of definite record, it is advisable that the deed to said board of education be recorded and that its volume and page in the records be inserted in the State deed. From said lot No. 386, there is also excepted a parcel conveyed to the board of education by a deed alleged to be dated January 13, 1928, but a reference to page 922 of the abstract reveals that the correct date is January 15, 1928.

Relative to tract No. 22 in the State deed, which tract is one of the two which were not formerly owned by The Zaleski Company, I find that George R. Merritt who received it in 1895 (p. 51, abstract) conveyed it in 1903 to William T. McClintick and Edward W. Strong (p. 52, abstract), but so far as the abstract is concerned there is nothing to show that it was conveyed to these two men as a joint estate with survivorship. In the absence of an express provision for survivorship, the two grantees would take as tenants in common, and, upon the death of one of them his undivided one-half interest would become part of his estate and the other grantee would not take the whole. See in re Hutchison, 120 O. S. 542. Hence, so far as the abstract shows, Mr. Strong owns only an undivided one-half interest in this tract. It is altogether possible that, due to an oversight, the survivorship element has just been omitted in the abstract. If so, I should like to have the abstractor furnish this information.

Furthermore, there is nothing in said deed from George R. Merritt to McClintick and Strong to show the marital status of the grantor. Dower was not released, and since this deed was executed only in 1903, it is desirable to have an affidavit to the effect either that Mr. Merritt was single at the time or that his wife has subsequently died.

The State deed, in describing the 20th tract, makes an exception of a parcel of land previously conveyed to Elijah B. Herrold, by deed dated January 29, 1903, but leaves blank the volume and page where said deed of exception is recorded. Said deed is shown on page 879 of the abstract which indicates that it is recorded in Volume 42, page 24, of the Vinton County deed records.

I am not altogether satisfied with a part of the description of tract No. 12 in the State deed. It begins in the southeast corner of the northwest quarter of Section 34, Town. 10, Range 16, and runs

“thence west on the quarter section line 39.15 chains to the east bank of a small run, the corner of D. Will's land; thence north 22 degrees east 26.25 chains to the center of Racoon Creek; * * *.”

The description in the receiver's deed is the same (p. 857, abstract). However, the deed by which The Zaleski Company, in 1857, received this land (p. 377, abstract) uses the following description:

“Beginning at the Southeast corner of said Northwest quarter and thence running West 127 rods; to a beech; thence North or nearly North down a hollow to a beech about 1 foot over standing 8 rods West from the mouth of the run putting into Big Racoon creek; thence to the center of Big Racoon creek; * * *.”

I call this to your attention for further investigation and information. Now concerning tract No. 11 in the State deed which relates to Section 30,

Town. 10, Range 16; I note that one Rufus W. Carley became owner in 1846 of the north half of the southwest quarter of said section (p. 202, abstract): that said Carley conveyed said parcel to one George Marsh in 1850 (p. 205, abstract); that there is no deed on record showing that said Marsh ever conveyed this parcel (p. 206, abstract) and that said Rufus W. Carley again conveyed said land, in 1855, to one Seneca W. Ely (p. 207, abstract). Hence, as far as the records show said Carley did not have any title at the time of his conveyance to Ely who is one of the predecessors in title of Mr. Strong. However, that hiatus occurred over seventy-five years ago, and there is a connected chain of title from said Ely to Mr. Strong. Sometime ago I received a letter from one F. A. Rosengarten, 2093 Coney Island, Brooklyn, New York, stating:

"The State of Ohio has acquired, about 3400 acres of land in Vinton County, which tract includes about 78 acres in Madison Township formerly the property of R. W. Carley.

Said R. W. Carley conveyed said 78 acres to Geo. Marsh whose heirs may have a valid claim to this property as there is no record of his reconveying it.

Would the State of Ohio be interested in owning a document conveying said 78 acres from Geo. Marsh back to R. W. Carley, the recording of which instrument would clear the title to this 78 acre plat?"

The tenor of this letter indicates that said Marsh reconveyed this land to said Carley and that the deed of reconveyance was simply never recorded. It may be well to procure this unrecorded deed from said Rosengarten if he is not withholding it for an outrageous price. However, the break in the chain of title due to this incident occurred so long ago that any rights which said Marsh or his heirs may have had, have long since been barred by the statute of limitations, and I am not disposed to withhold approval of the title to said strip even if said unrecorded deed is not procured.

I wish further to call your attention to the fact that one Abram H. Kinney is possibly the owner of some land in said section 30 which is encompassed in tract No. 11 of the State land. This arises from a deed made by The Zaleski Company on June 8, 1874, to Abram H. Kinney (p. 600, abstract) conveying a tract of land situated partially in section 36, Town. 10, Range 16, and in section 30, Town. 10, Range 16, just north of the town of Zaleski. Later, on May 24, 1880, said Kinney reconveyed to The Zaleski Company (p. 690, abstract) the northern part of the strip which the company had previously conveyed to Kinney. Although I am unable to establish the fact positively from the description used in the respective deeds, it appears from the plat furnished that a part of the residue of land left in said Kinney after said conveyance in 1880, lies in said section 30, and apparently this land of Kinney's is included in the description of tract No. 11 of the State land. This matter will bear further explanation.

Again, there seems to be some error in the 6th call of tract No. 11 in the State deed. It begins at the northeast corner of the corporate limits of Zaleski and runs

"thence *south* 23 degrees and 12 minutes west to the west line of said section; * * *."

However, a glance at the plat reveals that the line thus attempted to be described really runs in a northwesterly direction instead of in a southwesterly direction.

Still another part of the description of said 11th tract in the State deed requires further investigation. I refer to that part of the description which goes around a part of the boundary of the 5.05 acre tract belonging to George Atkinson. The plat indicates that said Atkinson tract lies in the southeast corner of the northeast quarter of the southeast quarter of Section 30, Town. 10, Range 16; while the deed of The Zaleski Company to said Atkinson (p. 730, abstract) describes a tract in the southeast corner of the *northwest* quarter of the southeast quarter of said section 30, although, at the beginning, the tract is referred to as a part of the northeast quarter of the southeast quarter of section 30. It would be well to make certain that the land claimed by said Atkinson or his successors does not fall within the boundary of the State land.

There are several small errors in the description of the 15th tract of the State land which should be corrected. Thus, the 6th call reads,

"thence south 66 degrees, and 48 minutes east to the east line of A. H. Kimmey's land; * * *."

Said "*east* line" should read, "*west* line." Furthermore, there is excepted from said 15th tract a parcel of land described as having been conveyed to Robert A. Webb by deed dated March 30, 1912. A reference to page 904 of the abstract reveals that said deed was actually dated March 13, 1912.

Apparently a call has been omitted in the description of the northeastern boundary of the 16th tract of the State land at the point where said State tract is adjacent to the southern part of the land conveyed to David Curran by The Zaleski Company in 1881 (p. 701, abstract). Thus, in the State deed the 22d call begins at a point in the line of the right of way of the Baltimore & Ohio Southwestern Railway Company and 50' from the center thereof and runs

"thence north 86 degrees and 3 minutes west 10 chains; thence north 3 degrees and 56 minutes east 47.13 chains to the north line of said section 25, * * *."

On the other hand, said deed to David Curran, beginning at the same point as that part of the description just quoted from the State deed, which point is described in the Curran deed as the southwest corner of Patrick Flannegan's land, runs

"thence North 86 deg. 3' West of the true Meridian 10:00 chains to a stake; thence North 58 deg. 33' to the true Meridian 10.79 chains to a stake; thence North 3 deg. 57' East of the true Meridian 47.13 chains to a stake; * * *."

Thus, it is apparent that the above italicized portion of said Curran deed has been omitted from, and should be inserted in, the description in the State deed.

From the 16th tract of the State deed, there is excepted a parcel of land conveyed to Robert Thompson, by deed dated July 5, 1897. I do not find this deed in the abstract and apparently it has not been recorded. It is suggested that this deed be procured and recorded so as to make the boundary of the State land a matter of definite record, and that the volume and page of the record be inserted in the State deed. This same suggestion is also made with reference to the land excepted from the 5th tract of the State deed and con-

veyed to Oscar Gibbs, Jr., by deed dated June 13, 1900, and in reference to the first parcel of land excepted from the 13th tract of the State deed which was also conveyed to said Gibbs by deed dated June 13, 1900.

On page 8 of the proposed deed to the State I note that the conveyance of the land known as the "Shop Grounds" from The Zaleski Company to the Marietta & Cincinnati Railroad Company is described as being dated *January 16, 1862*. Reference to this deed (p. 396, abstract) indicates that the correct date is *April 16, 1861*.

Near the end of the description of the 8th tract in the State deed, a certain point is referred to, in parenthesis, as "The northeast corner of Fifteenth Tract." Evidently this description was taken from the deed of The Zaleski Company's receiver. Inasmuch as the tract which was No. 15 in said receiver's deed is tract No. 14 in the State deed, the above quoted reference from the 8th tract in the State deed should be changed to read "The northeast corner of 14th tract".

I now come to a consideration of tracts No. 25 and No. 27 in the State deed. This land is situated in section 29, Town. 10, Range 16, and comprises a part of those lands originally known as "Ministerial Lands". At one time the ministerial lands were held in trust by the Ohio legislature and the rentals therefrom devoted to religious purposes. Later these lands were authorized to be sold. Before an individual owner can establish a good and merchantable fee simple title to any part of these ministerial lands it is necessary that there appear in the chain of title a deed in fee simple from the State of Ohio. See Peters' "Ohio Lands", 3d ed., 1930, especially chap. 36 entitled "Ministerial Lands", beginning at page 388.

Having this background in view, I shall first consider said tract No. 25. Nowhere in the abstract do I find that this particular strip was ever conveyed in fee simple by the State of Ohio to Mr. Strong or any of his predecessors in title. There appear in the abstract three different grants of ministerial land in said section 29 in fee simple by the State of Ohio, namely:

1. The grant to James Musgrave in 1843 (p. 141, abstract);
2. The grant to The Zaleski Company in 1889 (p. 168, abstract); and
3. The grant to James Peacock in 1892 (p. 173, abstract).

Said deed to The Zaleski Company, which conveys most of the other ministerial land now proposed to be sold to the State, seems to omit tract No. 25. Of course, it may be that I judge the description incorrectly because it relates some boundaries which are very difficult to follow. If this should happen to be the case, I should appreciate a clarifying explanation. It may be that this tract was a part of said grant to James Musgrave, the description of which begins at the northwest corner of Lot No. 4 in section 29. Inasmuch as I have been unable to locate said Lot No. 4 by the aid of the facilities furnished me, I am unable to say that tract No. 25 is included in the grant to Musgrave and need further information.

There are several questionable things about Mr. Strong's title to tract No. 27. This is one of the two tracts in the State land in whose chain of title The Zaleski Company was not one of the predecessors of Mr. Strong. This tract was conveyed by Elizabeth Muething in 1901 to William T. McClintick and Edward W. Strong (p. 176, abstract). However, there is nothing in the abstract to indicate that this tract was conveyed to Messrs. McClintick and Strong as a joint estate with survivorship, and in the absence of an express provision for

survivorship, the two grantees would take as tenants in common, and, upon the death of one of them his undivided one-half interest would become part of his estate and the other grantee would not take the whole. Hence, even assuming that everything else were regular, the abstract indicates that Mr. Strong owns only an undivided one-half interest in tract No. 27.

Furthermore, concerning said tract No. 27, I am unable to find, for a certainty, where the State of Ohio ever conveyed it in fee to Mr. Strong or his predecessors. Said Elizabeth Muething, the grantor of Messrs. McClintick and Strong, received this tract of land in 1900 in a conveyance by the widow and only surviving heirs at law of James Peacock (p. 174, abstract). However, I cannot definitely make out said James Peacock's derivation of title. True, in 1892, the State of Ohio made a grant of land in said section 29, in fee simple to James Peacock (p. 173, abstract); but the description therein used reads:

"One tract No. Seven (7), the South half of Section Twenty-nine (29), Town. Ten (10), and Range Sixteen (16), in said Vinton County, Ohio, containing Eighty hundredths (.80) acres."

The papers and data furnished me make no reference to the aforesaid tract No. 7 and, therefore, I have been unable to locate it. There are no common connecting terms between the description of tract No. 27 in the State deed and the aforesaid tract No. 7 mentioned in the grant to James Peacock by which I can determine, without further information, that the former is a part of the latter, although as a matter of fact it may be. I should like to have Mr. Strong's title to tract No. 27 pointed out back to a grant of a fee simple from the State of Ohio.

During the period of the ownership by The Zaleski Company and other predecessors in title of Mr. Strong of a great mass of land of which the land now proposed to be conveyed by Mr. Strong is a part, said predecessors made numerous conveyances from this mass of land. Most of these conveyances I have been able to locate with enough definiteness to determine that they are not included in the land now proposed to be conveyed to the State. However, because the descriptions in some of these deeds by said predecessors are in such unfamiliar terms that I cannot locate the land definitely, I suggest that you make certain that they are not included within the boundaries of the State land. The conveyances to which I refer are:

1. The deed from Conner Dowd to Owen Dowd, et al., on page 260 of abstract.
2. The deed of The Zaleski Company to John Baptist Purcell on page 409 of abstract.
3. The deed of The Zaleski Company to the Board of Education on page 512 of abstract.
4. The deed of The Zaleski Company to Francis Shades on page 567 of abstract, and
5. The deed of The Zaleski Company to Sanford Summers on page 617 of abstract.

The abstract fails to show that the deed of The Zaleski Company's receiver to Messrs. McClintick and Strong (p. 847, abstract) was acknowledged. This is due probably just to an oversight of the abstractor and can easily be cleared up by a statement from him.

The abstract indicates (p. 1280) that on October 15, 1920, Mr. Strong made a coal lease, with reference to some of the land included in the State deed, to Benjamin F. Wills. It further indicates (p. 1290, abstract) that on December 1, 1920, Mr. Wills executed to Mr. Strong a quit claim deed covering the same land. However, at least so far as the abstract shows, Mr. Wills did not sign said quit claim deed, nor was said deed witnessed. Said lease, being for a period of ten years, with a right of renewal for such further time as may be necessary to mine and remove the coal from land leased, may have, by this time, expired according to its own terms. On this point, I seek further enlightenment; but if said lease has not so expired and if the original of the quit claim deed, as a matter of fact, contains no signature or witnesses, a new quit claim deed, properly executed, should be procured.

On August 3, 1907, Mr. Strong made an oil and gas lease to The Southern Ohio Gas Company (p. 1306, abstract) with reference to some of the land in the State deed. So far as I am able to find, there is nothing in the abstract indicating that this lease has ever been surrendered, and I withhold my approval of the land covered by this lease until this encumbrance has been removed. In a letter from Mr. Strong to Mr. Secrest, State forester, it is stated that all coal, oil and gas leases, formerly existing, "have been surrendered and cancelled, or otherwise gotten rid of". I should like to request an explanation of the manner in which the lease in question has been disposed.

On October 20, 1915, Mr. Strong executed to The Logan Natural Gas and Fuel Company an oil and gas lease (p. 1326, abstract) covering some of the land now to be conveyed to the State. The abstract does not show that The Logan Natural Gas and Fuel Company ever canceled or surrendered this lease. However, page 1339 of the abstract indicates that, on February 11, 1931, The Ohio Fuel Gas Company and The Preston Oil Company purported to cancel said lease. There is nothing to show that this lease was ever assigned to The Ohio Fuel and Gas Company and The Preston Oil Company and nothing indicates by what right they surrender said lease. Assuming that these two companies did have the power to surrender said lease, the instrument nevertheless appears to be defective inasmuch as it is signed by only one of the two companies, i. e., The Ohio Fuel Gas Company. The acknowledgment of this instrument is also somewhat queer inasmuch as it refers to the two companies as "the corporation" and as "said corporation". It is suggested that a new properly executed cancellation of said lease be procured and that it show by what right said two companies cancel the lease which was originally executed to The Logan Natural Gas and Fuel Company.

On page 10 of the proposed deed to the State are listed four rights and interests which are excepted from the conveyance to the State. They are:

- "(1) The rights of way of The Baltimore & Ohio Southwestern Railroad Company for its main line and switch tracks therefrom;
- (2) All lawful streets, roads and highways within the boundaries of the premises herein conveyed;
- (3) The right of The Central Union Telephone Company to construct and maintain one line of poles and wires thereon along the westerly boundary of the Baltimore & Ohio Southwestern Railroad, and along certain highways in the Village of Zaleski, under a grant to it from the grantor herein dated May 30, 1904;

- (4) And the rights of way of The Buckeye Pipe Line Company, under a lease from the grantor herein to it, dated November 29, 1916, recorded in Volume 17, at page 375, of the lease records of Vinton County, Ohio, and under a lease to it from said grantor, dated February 24, 1926, recorded in Volume 27, at page 95, of said lease records."

I find no reason for making any legal objection to these exceptions. If it sees fit, within its discretion, the Board of Control of the Ohio Agricultural Experiment Station may acquire these lands with said four exceptions.

The taxes for the second half of 1930 and the taxes for all of the year 1931 are now a lien upon this property.

The controlling board has given its approval of the purchase, and encumbrance estimate No. 1777 indicates that there remains in the proper appropriation account a sufficient balance to pay the purchase price of said land.

The proposed deed to the State of Ohio is in proper form for the conveyance of a fee simple title, with release of dower, to the State of Ohio. Besides several minor changes already suggested in said proposed deed, I suggest a further one in the very first paragraph. There, the lots and parcels of land situated within the incorporated village of Zaleski are referred to as "numbered and laid down on the plat thereof, made by Lewis W. Sifford, December 25th, A. D. 1863, * * *", while, as a matter of fact, the lots mentioned in the State deed are numbered according to the renumbering made of the lots in said village on January 31, 1877. See page 645 of abstract.

It should be stated here that the abstract of title is certified under the date of April 10, 1931; also, that I have failed to mention many other irregularities because of the lapse of time since their occurrence has rendered them immaterial.

I am herewith returning to you all of the papers enumerated above as having been received except the abstract which will be sent to you under separate cover.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3560.

APPROVAL, BONDS OF LUCAS COUNTY, OHIO—\$157,000.00.

COLUMBUS, OHIO, September 11, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3561.

APPROVAL, BONDS OF CLEVELAND HEIGHTS CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$173,500.00.

COLUMBUS, OHIO, September 11, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.