

It will be noted that Section 2293-17, *supra*, provides that no indebtedness, with the exception of the bonds excepted in Section 2293-13, General Code, shall be incurred unless authorized by vote of the electors. The bonds excepted in Section 2293-13, General Code, (112 O. L. 364, 369), are as follows:

“Bonds or notes issued in anticipation of the levy or collection of special assessments, either in original or refunded form, county bonds issued in anticipation of the levy or collection of township taxes, notes issued in anticipation of the collection of current revenues, notes issued for emergency purposes under Section 2293-7 of the General Code or heretofore issued under Sections 4450, 5629, or 7630-1 of the General Code, and bonds issued to pay final judgments shall not be considered in calculating the net indebtedness.”

Bonds by a township issued to pay the township's portion of the cost of road improvements clearly do not fall within the excepted class set out in Section 2293-13, General Code. The transcript does not indicate that an election was held on the question of whether or not the above bond should be issued.

For the above reasons, it is my opinion that the above bonds are being issued without legal authority and I am therefore compelled to advise you not to purchase the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1546.

APPROVAL, ABSTRACT OF TITLE TO LAND IN TOWNSHIP OF GOSHEN,
TUSCARAWAS COUNTY, OHIO, FOR THE SCHOENBRUN SITE.

COLUMBUS, OHIO, January 7, 1928.

HON. ROBERT H. NUSSDORFER, *Secretary of Committee for Purchase of Site of Village of Schoenbrun, Dover, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion an abstract of title prepared and certified by Mrs. Jessie B. Arx, abstractor, of New Philadelphia, Ohio, under date of October 10, 1927, pertaining to a tract of approximately 111.39 acres of land situated in the Township of Goshen, County of Tuscarawas and State of Ohio, which it is proposed to purchase from Otis P. Morris.

Upon examining said abstract, I am of the opinion that Otis P. Morris has a good and merchantable title to said premises, subject to the following:

1. The taxes for 1927, the amount of which does not appear in the abstract.
2. A right of way executed by O. P. Morris to The Ohio Service Company on February 8, 1923, recorded in Lease Book 14, page 617, granting the right to construct, operate and maintain a power line with the right to set necessary guy and brace poles, and attach the guy wires over and along the property. The consideration to be paid was \$2.00 for each and every pole or tower erected in open ground and ----- dollars for each and every pole erected on fence lines or along streets and highways. The lease stated that at that time there were twenty-one poles on the land.
3. An easement granted by Otis P. Morris and wife to The Ohio Service Company on March 17, 1926, recorded in Lease Book 18, page 292, granting the right to construct, erect, operate and maintain a line for the purpose of transmitting electric or

other power and telegraph and telephone lines, together with the right to cut and remove from the premises adjoining the lines on either side any trees or other obstructions which might interfere with the use of said poles, towers, fixtures or wires, and the right of ingress and egress to and over said premises for the purpose of patrolling the line, repairing or adding to the number of poles, etc., and for doing anything necessary or useful or convenient for the enjoyment of the same. The consideration to be paid for the same was the sum of \$1.00 per pole along fence lines and \$5.00 per pole erected in the open field.

4. An oil and gas lease executed by Otis P. Morris and wife in favor of The Ohio Fuel Gas Company on August 26, 1926, recorded in Lease Book 19, page 457, by the terms of which the lessor granted unto the lessee all of the oil and gas and all of the constituents thereof in the land under consideration, together with the exclusive right to drill for, produce and market oil and gas and their constituents, and also the right to enter on said land at all times for the purpose of drilling and operating for oil, gas and water and to possess, use and occupy so much of the premises as is necessary and convenient in removing the above-named products therefrom, by pipe lines or otherwise, for a term of five years and so much longer thereafter as oil, gas or their constituents are produced in paying quantities. The lessee was to drill a well on said premises within six months from the date of the execution of the instrument or pay the lessor \$29.50 each six months thereafter until such well is drilled or the lease surrendered. The abstracter does not set out any consideration for the lease or any other consideration for the continued enjoyment of the easement.

It will be noticed that the option executed by Otis P. Morris and wife on the 11th of October, 1927, to the state for the land under consideration, says that an abstract will be furnished showing a good title to the premises, "free from all encumbrances, except an oil and gas lease granted by me to The Ohio Fuel Gas Company, dated August 25, 1926, all interest in which I agree to transfer with the property in case of exercise of this option. * * * I agree to execute and deliver a good and sufficient warranty deed for said property free and clear of all taxes, assessments and liens, except said lease."

Investigation should be made by the committee for the purchase of the ground for the preservation of the site of Schoenbrun as to whether or not the existence of the rights of ways and the oil and gas lease above referred to will interfere with the use of the property by the state for the purposes for which it is desired to purchase the same.

No encumbrance certificate or deed were submitted with the abstract and I am therefore unable to render an opinion on the same.

The abstract, option and correspondence relative to the above matter are herewith returned.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1547.

APPROVAL, RESOLUTION FOR SALE OF ABANDONED CANAL LAND
IN THE CITY OF MASSILLON, STARK COUNTY, OHIO.

COLUMBUS, OHIO, January 7, 1928.

HON. R. T. WISDA, *Director of Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of December 21.