

by my approval endorsed upon the leases and upon the duplicate and triplicate copies thereof.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

677.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED AND CONTRACT ENCUMBRANCE RECORD RELATING TO THE PROPOSED PURCHASE OF A TRACT OF LAND IN HANOVER TOWNSHIP, ASHLAND COUNTY, OHIO.

COLUMBUS, OHIO, June 2, 1937.

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

DEAR SIR: Some time ago you submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 41 and other files relating to the proposed purchase of a tract of 143.457 acres of land which is owned of record by Walter Dete, John B. Dete, Marguerite Dete and Mary T. Smith in Hanover Township, Ashland County, Ohio, which is more particularly described by metes and bounds in the deed which has been tendered to the State of Ohio by the above named persons as owners of the property. This property is likewise fully described by metes and bounds in Opinion No. 389, relating to the title to this property, directed to you under date of April 5, 1937.

As stated in the former opinion of this office here referred to, I found upon examination of the abstract of title submitted that said Walter Dete, John B. Dete, Marguerite Dete and Mary T. Smith had apparent title to this property by descent from their father and mother, Joseph Dete and Martha J. Dete, deceased, who obtained their title to the property by and through the last will and testament of one John B. Dete, the father of Joseph Dete, who died in the year 1909. In said opinion, it was further noted that John B. Dete, the father of Joseph Dete, obtained legal title to the property by and through a deed executed to him by the Sheriff of Ashland County under date of January 23, 1894, pursuant to an order of the Common Pleas Court of that county in a case instituted by John B. Dete to foreclose certain mortgages, which

had theretofore been executed to him by one Lucy A. Ward, the then owner of this property. It was further noted that at the time this mortgage foreclosure proceeding was filed by John B. Dete one William A. Fike likewise owned and held a mortgage on this property in and for the sum of \$985.00, and that there was some question on the face of the proceedings in this mortgage foreclosure case as to whether said William A. Fike was properly made a party defendant in this case. In any event, it was clear that said William A. Fike entertained the view that he had not been made a party defendant in the mortgage foreclosure proceedings instituted by John B. Dete, and this is evidenced by the fact that long after John B. Dete obtained title to the property by sheriff's deed in this mortgage foreclosure proceeding and three years or more after the death of John B. Dete, said William A. Fike filed an action in ejectment in the Common Pleas Court of Ashland County against said Martha J. Dete, Walter Dete, Mary Dete, John Dete and Marguerite Dete, as defendants, to recover this land. This action was commenced September 17, 1912, and at the time I directed to you Opinion No. 389, above referred to, this action was still pending and was a cloud upon the title of the present owners of record of this property. I therefore suggested to you in said opinion that the Board of Control of the Ohio Agricultural Experiment Station decline to purchase this property until the action above referred to filed by William A. Fike should be dismissed.

In this opinion I called your attention to the fact that although the then pending action filed by William A. Fike was dismissed, it might be that inasmuch as such dismissal was not on the merits of the case, he might have a right to refile his action within one year from the date of such dismissal, as provided for by Section 11233, General Code.

On April 17, 1937, an order was made and entered by the Common Pleas Court of Ashland County in the ejectment action theretofore filed by William A. Fike dismissing the case "for want of prosecution, in that nothing has been done in this case since the 23rd day of April, 1917." Nothing was said in the entry dismissing the case as to whether such dismissal was with or without prejudice to a new action. In this situation, I thought it advisable not to approve the title to this property until I received further information with respect to said William A. Fike and as to the probability of a new action being filed by him to recover this property under favor of the statute above referred to. A few days ago I received a communication from Mr. O. A. Alderman, Associate Forester, in which he advised me that he had made a search for Mr. Fike

and had ascertained that a person by the name of William Albert Fike died at Newark, Ohio, on January 20, 1923, at the age of sixty-seven. Mr. Alderman stated that from his investigation he was quite certain that the person who died at Newark on the date above indicated was the William A. Fike above referred to in connection with the litigation in Ashland County, Ohio.

In this situation, I am inclined to the view that the title of Walter F. Dete, John B. Dete, Marguerite Dete and Mary T. Smith in and to this tract of land may be safely approved as far as any adverse interests of said William A. Fike are concerned. I am accordingly of the opinion that said persons, Walter F. Dete, John B. Dete, Marguerite Dete and Mary T. Smith, have a good merchantable fee simple title to the above described tract of land and that they own and hold the same free and clear of all encumbrances except the following encumbrances which are here noted as exceptions to their title:

1. On October 17, 1921, Martha J. Dete, who then held title to this property under the last will and testament of John B. Dete, the father of her deceased husband, Joseph Dete, executed an instrument in writing in and by which she granted to The Buckeye Pipe Line Company a right of way easement for the construction and maintenance and operation by said pipe line company of a line for the transportation of petroleum in and through said premises. There is nothing in the abstract of title to show what, if anything, was done by The Buckeye Pipe Line Company with respect to the construction of such pipe line. Neither do I have any information as to how, if such pipe line has been constructed, the maintenance and operation of the same will affect the use that you may desire to make of these premises. This instrument and the apparent rights of The Buckeye Pipe Line Company thereunder are here noted as an encumbrance upon the property.

2. On April 11, 1923, which apparently was some time after the death of their mother, Martha J. Dete, Mary T. Smith, Walter F. Dete, John B. Dete and Marguerite Dete, then a minor, by her guardian Josephine Dete, executed an oil and gas lease to The East Ohio Gas Company covering this property. By this lease, which is stated in the abstract to be one for a term of ten years, The East Ohio Gas Company was given the right to enter upon this land and drill and operate thereon for oil and gas and to construct pipe lines, tanks, stations and other structures necessary in the removal and transportation of such products. There is nothing in the abstract of title to indicate whether any operations for oil and gas were commenced by the above named lessee so as to continue the term of the lease during such time as oil and gas might be

found upon the premises, if, as a matter of fact, a provision to this end appears in such lease. This matter is noted as an exception to the title to the end that you may investigate the fact as to what, if anything, was done by the lessee under this lease.

3. On May 1, 1924, Walter F. Dete, John B. Dete and their sisters above named executed an instrument in writing in and by which they granted to The Logan Gas Company a right of way for a roadway in and upon the above described premises to a gas well, known as the George and C. A. Ham gas well. What, if anything, was done under this instrument with respect to the construction of the road therein provided for is not stated in the abstract; but I assume that you or your representatives are familiar with the facts in regard to this matter.

4. In the abstract of title which was certified by the abstractor under date of November 14, 1936, it is stated that the taxes on the property are all paid. From the date of the certification of this abstract I assume that the taxes therein referred to were those for the year 1935 and prior years. Although the taxes for the year 1936 were then a lien upon the property, the first semiannual installment of such taxes did not become due and payable until December, 1936. In this situation, I assume that the taxes for the year 1936 upon this property are unpaid and are a lien upon the property as are likewise the undetermined taxes for the year 1937.

Subject only to the exceptions above noted, the title of the above named persons who appear as grantors in the warranty deed here referred to is approved. Upon examination of the warranty deed which has been tendered to the State of Ohio by Walter F. Dete, John B. Dete, Marguerite Dete and Mary T. Smith, I find that said deed has been properly executed and acknowledged by said grantors and by the respective wives of Walter F. Dete and John B. Dete and by the husband of Mary T. Smith, it appearing that said Marguerite Dete is unmarried. The form of this deed is such that the same is legally sufficient to convey this tract of land to the State of Ohio, the grantee therein named, by fee simple title free and clear of the inchoate dower interests of the respective spouses of such of said grantors as are married, as above stated, and with a covenant of warranty that the premises are free and clear of all encumbrances whatsoever, "save and except a certain oil and gas lease to and in favor of The East Ohio Gas Company, executed on or about April 11, 1923, the rentals or payments due thereunder to be paid during the continuance of such lease to the grantors herein." I am accordingly approving this deed.

Upon examination of contract encumbrance record No. 41 I find that the same has been properly executed in conformity with the pro-

visions of Section 2288-2, General Code, and that there is shown thereby a sufficient balance in the rotary fund to the credit of the Division of Forestry to pay the purchase price of this property, which purchase price is the sum of \$3,000.00. I am therefore approving said contract encumbrance record. And inasmuch as it appears that the purchase price of this property is to be paid from said rotary fund which has been set up in the office of the Treasurer of State under the authority of House Bill No. 571, enacted December 20, 1936, no approval of the purchase of this property by the Controlling Board was or is necessary.

I am herewith returning to you said abstract of title, warranty deed and contract encumbrance record No. 41 and other files to the end that you may issue voucher covering the purchase price of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

678.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, CONTRACT ENCUMBRANCE RECORD RELATING TO THE PROPOSED PURCHASE BY THE FORESTRY DIVISION IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, June 2, 1937.

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

DEAR SIR: You have submitted for my examination an abstract of title, warranty deed, contract encumbrance record No. 43 and other files relating to the proposed purchase by the State of Ohio for the use of the Division of Forestry of your department of a tract of land in Nile Township, Scioto County, Ohio, which is bounded and described as follows:

The north portion of Ohio State University Lot Number Thirteen (13), beginning at a concrete boundary marker, of State of Ohio, Division of Forestry, on top of a small ridge northwest corner of Lot Number 12 and in the south line of Survey Number 15833; thence N. 27-04½ W, 322.00 feet, down the hill to the bottom of hollow to a pile of stone; thence N. 2-31 E, 562.69 feet up the hill to the top of the ridge to a