

lot and premises, free and clear of the respective dower rights of said grantor, and free and clear of all encumbrances except the taxes thereon due and payable on and after December, 1929.

From the form of the warranty in this deed as above stated, I assume that the mortgage upon said lot and premises held by The Dollar Building and Loan Company and noted in Opinion No. 760 above referred to, is to be paid off by said grantors either out of the purchase money of the proposed sale to the State of Ohio or in some other way.

As above indicated, this deed has not yet been executed by said Journey Anderson and Zephyr Anderson, and before the purchase money for this property, or any part thereof, is paid over, this deed should be executed by said parties and the same approved by this department.

Said deed form is herewith forwarded to you.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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819.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES L. TULLER IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, September 3, 1929.

HON. CARL E. STEEB, *Business Manager, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval, an abstract of title, deed and encumbrance estimate relating to the proposed purchase of a certain lot and tract of land in the city of Columbus, Franklin County, Ohio, which is owned of record by one Charles L. Tuller, and which is more particularly described as being Lot No. 13 of Burton's subdivision of the north half of the south half of Lot 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus as said Lot 13 is numbered and delineated on the recorded plat thereof of record in Plat Book 3, page 350, Recorder's Office, Franklin County, Ohio.

An examination of the abstract submitted, which carries the title to this property from May 24, 1884, to August 23, 1929, shows that on April 1, 1915, and for some years prior thereto, one Ele W. Tuller and his wife Sarah E. Tuller, owned the above described property as tenants in common, each owning an undivided one-half interest therein. Said Ele W. Tuller died testate on April 1, 1915, and by his last will and testament he devised to his wife Sarah E. Tuller, as the residuary devisee of his estate, all his right, title and interest in and to said premises, and thereafter said Sarah E. Tuller owned said lot in its entirety by fee simple title.

Said Sarah E. Tuller died testate on August 10, 1923, seized of the property here under investigation. By Item 7 of her last will and testament said Sarah E. Tuller devised to her grandson Charles Tuller, who is one and the same person as the Charles L. Tuller above mentioned, Lot No. 6 of Barton's Addition to the city of Columbus, Franklin County, Ohio. There is nothing in the abstract to affirmatively show that at the time of the execution of the will of said Sarah E. Tuller, or at any other time, she or her deceased husband Ele W. Tuller, ever owned a lot of this number and description in Barton's Addition to the city of Columbus. On the other hand, there is nothing in said abstract which affirmatively shows that said Lot No. 13 of Barton's

Addition to the city of Columbus was the only lot which said Sarah E. Tuller owned in said addition at the time of her decease. Apparently the Probate Court found and determined that by the provision in the last will and testament of Sarah E. Tuller devising Lot No. 6 in said addition to said Charles Tuller, said testatrix intended to devise to him Lot 13 of said Barton's Addition; for in this connection, it is noted that on April 21, 1925, the Probate Judge of Franklin County, pursuant to the provisions of the statute in such case made and provided, made a certificate and order for the transfer of said Lot 13 of Barton's Addition upon the duplicates of the county to said Charles L. Tuller, the named devisee in said will, and upon the filing of said certificate and order in the office of the County Auditor, said Lot 13 of Barton's Addition was transferred on the county duplicates to the name of said Charles L. Tuller.

However, I do not feel that I can safely approve the title of said Charles L. Tuller to said Lot 13 of Barton's Addition, which is the property here under consideration, without a showing by way of affidavit or affidavits to be submitted and made a part of the abstract, that at the time said Sarah E. Tuller executed her last will and testament, and at the time of her death, the only lot that she owned in Barton's subdivision of the north half of the south half of Lot 278 of R. P. Woodruff's Agricultural College Addition was said Lot 13, which is the property here under investigation. Any other evidence that may be available tending to show that the provisions of Item 7 of the last will and testament of Sarah E. Tuller were meant to apply to Lot 13 of Barton's said subdivision, should, of course, likewise be submitted.

By Section 53 of the abstract submitted, there is noted a certain action in the Common Pleas Court of Franklin County, Ohio, filed July 10, 1920, wherein the City National Bank of Commerce of Columbus, Ohio, as executor of the will of Ele W. Tuller, deceased, seeks a construction of the will of said Ele W. Tuller, and in said action said Charles L. Tuller and others are named parties defendant. The petition filed by the plaintiff in this case is not sufficiently abstracted to show whether the property here under investigation is affected by any questions made in this case or not. It is altogether probable that said Lot 13 is not affected by the questions presented to the Court with respect to the construction of the will of said Ele W. Tuller, but the petition in this case should be sufficiently abstracted to show the fact.

It appears from the abstract that the taxes upon said lot for the year 1928 have been paid but that the undetermined taxes thereon for the year 1929 are unpaid and are a lien.

An examination of the deed form of the warranty deed to be executed by said Charles L. Tuller and Helen Y. Tuller, his wife, shows that the same is sufficient in form to convey to the State of Ohio a fee simple title to the above described premises, free and clear of the dower interest of said Helen Y. Tuller, and free and clear of all encumbrances except such taxes and assessments as may become due and payable on and after December, 1929. As above indicated, this deed has not yet been executed by said Charles L. Tuller and wife, and no voucher should be issued for the purchase price of this property until same has been signed and otherwise properly executed by said Charles L. Tuller and wife and same has been approved by this department.

Encumbrance estimate No. 5639, submitted with the above files, shows that the same has been properly executed and that there are sufficient balances in a proper appropriation account to pay the purchase price of this property.

From the certificate of the Controlling Board on file in the office of the Director of Finance, I am advised that of the appropriation of the sum of \$55,000 under the heading "Additions and Betterments—Lands" made to the Ohio State University by House Bill No. 510, the sum of \$25,000 has been released by said Controlling Board

for the purchase of Lot 53 under investigation, and of other lots desired for the use of the said Ohio State University.

I am herewith returning to you said abstract of title, warranty deed form and encumbrance estimate.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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820.

**BURIAL COMMITTEE—APPOINTED BY COUNTY COMMISSIONERS TO PROVIDE INTERMENT OF SOLDIERS—WHEN CONTRACT WITH UNDERTAKER, UNLAWFUL—NO FINDING FOR RECOVERY WHEN SERVICES PERFORMED.**

**SYLLABUS:**

1. *A burial committee authorized under the provisions of Sections 2950, et seq., of the General Code, may not lawfully enter into a contract with an undertaker for the burial of a person described in said section, who dies without dependents and leaves an estate which is amply sufficient to defray such expense.*

2. *In the event that such burial committee has determined that the family is unable, for want of means, to defray such expenses and a contract has been entered into with an undertaker, and payments made to such undertaker who has performed his part of the contract, a recovery may not be had against such undertaker in the absence of fraud or collusion, in which such undertaker participates, notwithstanding it develops that the decedent left an estate sufficient to defray such expenses, and left no dependents.*

3. *Under such circumstances, when payments have not been made, the county commissioners or county auditor may set up as a defense to an action to recover upon such contract the fact that the same was illegally entered into on account of the financial status of the decedent.*

COLUMBUS, OHIO, September 3, 1929.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your communication which reads:

“You are respectfully requested to furnish this department your written opinion upon the following:

Sections 2950 to 2956 of the General Code relate to payment of expenses of burial of indigent soldiers, sailors and marines, and of their indigent mothers, wives and widows.

Question 1. When a soldier dies leaving no dependents, and leaves an estate according to the records of the Probate Court sufficient to cover the expense of burial, and the burial committee, without proper investigation, makes a contract with an undertaker for the burial, may the commissioners of the county, or the county auditor, refuse to pay the \$100 provided by law, notwithstanding the fact that the committee has made a contract with the undertaker?

Question 2. In the event that an undertaker has been paid the sum of \$100, in such cases may the examiner from this department make a finding against the undertaker, and recover the amount so paid?