

ices although "employment" may be exempt from the provisions of the act upon your commission being satisfied that such conditions exist.

It is accordingly my opinion in specific answer to your question that sub-paragraph (D) of Section 1345-1, paragraph c, defining services which constitute "employment" within the meaning of the term as used in the Unemployment Compensation Act, does not qualify the services tabulated under sub-paragraph (E) of such section, which services are not included within the meaning of the term "employment" as used in such act.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1476.

APPROVAL--WARRANTY DEED RELATING TO PROPERTY
IN THE CITY OF COSHOCTON FOR AN ARMORY.

COLUMBUS, OHIO, November 18, 1937.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, warranty deed and an executor's deed relating to certain property in the city of Coshocton, Ohio, which is being acquired by the State for the purposes of an armory in said city. This property, as the same is described in the deeds above referred to, comprises lots numbered 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312 and 2313, as shown on the plat of said city of Coshocton, Ohio

Upon examination of the abstract of title of the lots above designated, it appears that in the year 1908 one Jesse McClain acquired title to an undivided one-half interest in the above designated lots and that thereafter in the year 1922 one Clara B. Olney acquired the title to the other undivided one-half interest in these lots.

The executor's deed above referred to is a deed executed by Charles M. McClain, the sole surviving executor of the estate of Jesse McClain, in and by which the undivided one-half interest of said Jesse McClain in and to these lots is conveyed to the State of Ohio as the purchaser of such property pursuant to an order of sale directed to said executor by the Probate Court of Coshocton County, in a proceeding instituted in that court by Charles McClain and Robert Porteus, as executors of the

estate of Jesse McClain, deceased, to pay the debts of his estate and to carry out the terms and provisions of his last will and testament. In this proceeding in the Probate Court of Coshocton County all of the many persons who directly or indirectly were beneficiaries under the last will and testament of Jesse McClain and judgment creditors of certain named beneficiaries under said last will and testament were made parties defendant. On examining the proceedings in the Probate Court of Coshocton County, Ohio, for the sale of the undivided one-half interest of Jesse McClain in and to the above designated lots, I am of the opinion that said proceedings are in all respects regular and that by the order of sale made by the court in this case, the confirmation thereof and the executor's deed, above referred to, the State will acquire a good and indefeasible fee simple title to the undivided one-half interest in said lots which said Jesse McClain owned and held therein at the time of his death in 1925, subject only to a possible encumbrance affecting lots 2311 and 2312. As to this, it appears that on November 16, 1929 Charles M. McClain, Florence V. McClain, Robert Porteus, Cella Porteus, W. H. Compton and John A. Heskett, representing or assuming to represent all or a part of the interest which Jesse McClain in his lifetime owned and held in these lots, and Clara B. Olney, who then owned and held the other undivided one-half interest in these lots, executed an instrument in deed form in and by which they conveyed to The Ohio Power Company the right to erect, maintain and relocate a line for the purpose of transmitting electrical energy over lots 2285, 2286, 2311 and 2312 on the plat of the city of Coshocton, Ohio. I am not advised as to what, if anything, was done by The Ohio Power Company in the way of the construction of an electric power line under this easement granted to it as above stated or how such line, if the same has been constructed, affects lots 2311 and 2312 or the use which you may desire to make of these lots for armory purposes.

As a further encumbrance on the Jesse McClain interest in these lots which the State is acquiring by the executor's deed above mentioned, it is noted from the abstract that there are delinquent taxes on this interest in these lots in the sum of \$57.18. And I assume, likewise, that the current taxes on this undivided one-half interest in these lots is also a lien upon this property.

Clara B. Olney who, as above noted, acquired title to the other undivided one-half interest in the lots here in question in the year 1922, died on the 9th day of May, 1936; and by her last will and testament which was duly probated and filed for record in the Probate Court of Franklin County, Ohio, all of her right, title and interest in these lots and in other real estate owned by her, was devised to her two daughters Eleanor Olney and Dorothea Rohlfing who, together, as the owners of

this undivided one-half interest in these lots, have executed and tendered to the State of Ohio a deed in and by which they are conveying to the State the undivided one-half interest in these lots which they now own and hold.

Upon examination of the abstract of title, I find that Eleanor Olney and Dorothea Rohlfing have a good and indefeasible title to an undivided one-half interest in the above designated lots which they are conveying to the State of Ohio by the deed above mentioned, subject to certain liens and other encumbrances which are here noted as exceptions to their title in and to this property :

1. On April 21, 1931, Clara B. Olney who at that time owned this undivided one-half interest in the lots here under investigation, executed a mortgage on this property and other real estate which she owned or in which she had an interest to The Commercial National Bank, Coshocton, Ohio, to secure the payment of a promissory note of even date therewith executed by her to said bank in the sum of \$650.00, which note by its terms was made due and payable on demand. So far as is shown by the abstract of title, this mortgage has not been canceled of record and the same is a lien on the interest of Eleanor Olney and Dorothea Rohlfing in and to these lots to the extent of the amount of money remaining due and unpaid on the promissory note secured by the mortgage.

2. The easement granted to The Ohio Power Company by Clara B. Olney and by the other persons above named under date of November 16, 1929, affecting lots 2311 and 2312, is apparently an encumbrance upon the interests of Eleanor Olney and Dorothea Rohlfing in and to the lots affected by said easement.

3. It appears from the abstract of title that on July 1, 1937, after the death of said Clara B. Olney, the Probate Judge of Franklin County, Ohio, issued a certificate for the transfer to Eleanor Olney and Dorothea Rohlfing of the undivided one-half interest of Clara B. Olney in and to a number of lots on the plat of the city of Coshocton, Ohio. Although the other lots here under investigation were included in said certificate of transfer, it does not appear that lot 2313 here in question was included in this transfer. Inasmuch, however, as it quite clearly appears from the abstract that Clara B. Olney in her lifetime owned an undivided one-half interest in said lot 2313, as well as in the other lots here in question, and since it does not appear that she at any time conveyed away her interest in lot 2313, I am inclined to the view that she owned and held her undivided one-half interest in this lot, as well as in the other lots above referred to, at the time of her death, and that her interest in this and in the other lots as well on her death passed to Eleanor Olney and Dorothea Rohlfing. It would seem, therefore, that with respect to the omission of said lot 2313 there was an error either

in said certificate of transfer or in the abstract of the same as the same is set out in the abstract of title submitted to me.

4. As before noted, Clara B. Olney died in the year 1936 and by her last will and testament Eleanor Olney and Dorothea Rohlfing succeeded to her interest in the lots here in question and in other real estate owned by Clara B. Olney at the time of her death. The abstract of title does not show any determination of the inheritance taxes, if any, payable on the successions of Eleanor Olney and Dorothea Rohlfing in and to the real estate and other property which they took under the last will and testament of their mother Clara B. Olney. Such inheritance taxes, if any there be, are a lien upon the real estate passing to said devisees. And for this reason there should be a determination of the inheritance taxes with respect to such successions; and if it be determined that such inheritance taxes are payable, the same should be paid before the transaction for the purchase of this property is closed.

5. It appears from the abstract that there are delinquent taxes on the Eleanor Olney and Dorothea Rohlfing interest in these lots in the sum of \$90.73; and it may be assumed that the current taxes on their interest in these lots are likewise a lien upon the property.

As a circumstance affecting the proposed use of the lots here in question for armory purposes, it is noted from a plat of these lots under their original numbers that there is a fifteen-foot alley between the first twelve lots here in question, above designated as lots 2282 to 2293, inclusive, and lots 2304 to 2313, inclusive. I assume that proper steps will be taken for the vacation of this alley upon the acquisition of this property by the State of Ohio for the purpose above stated.

Upon examination of the deed tendered to the State by Charles McClain, the sole surviving executor of the estate of Jesse McClain, deceased, I find that said deed has been properly executed and acknowledged by said grantor and that the form of this deed is such that the same is legally sufficient to convey to the State of Ohio by fee simple title the undivided one-half interest in and to the lots here in question, of which Jesse McClain died seized. Likewise, with respect to the warranty deed tendered by Eleanor Olney and Dorothea Rohlfing, I find that said deed has been properly executed and acknowledged by said grantors and by Albert F. Rohlfing, the husband of said Dorothea Rohlfing, and that the form of this deed is such that the same is legally sufficient to convey to the State of Ohio by fee simple title the other undivided one-half interest in the lots here in question which was formerly owned and held by Clara B. Olney, with the covenant of warranty in said deed contained that the property and interest thereby conveyed is free and clear of all encumbrances whatsoever.

As to both of the deeds above referred to, it is noted that the property and interest thereby conveyed is for a stated consideration of "One Dollar and other considerations." As to this, I am informed that as far as the State of Ohio is concerned the conveyance of these lots to it for the purpose above stated is made as a donation to the State, and that this fact accounts for the form of the consideration clause in each of these deeds. The same circumstance accounts for the fact that no contract encumbrance records and Controlling Board certificates have been submitted to me for my examination in connection with the proposed acquisition of this property.

I am herewith returning to you the abstract of title and deeds above referred to.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1477.

DISAPPROVAL—TRANSCRIPT OF PROCEEDINGS RELATING
TO SALE TO ONE HENRY HUTCHISON OF NELSON-
VILLE, OHIO, A PARCEL OF HOCKING CANAL LANDS.

COLUMBUS, OHIO, November 18, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a transcript of your proceedings relating to the sale to one Henry Hutchison of Nelsonville, Ohio, of a parcel of abandoned Hocking Canal lands in Section 24, town 12 north, range 15 west, York Township, Athens County, Ohio, which parcel is more particularly bounded and described as follows:

Commencing at a point in the west corporation line of the city of Nelsonville in said city and on the south line of State Highway Route No. 31, and running thence west along the south line of said Route No. 31, a distance of three hundred sixty-nine (369') feet to an iron pin that marks the southeast corner of a lot or parcel of land owned by Pearl Leaman; thence south one hundred thirty-five (135') feet to an iron pin