

240.

DEED—TO STATE, GEORGE L. HILL, ET AL., DESIGNATED
LAND, WALNUT TOWNSHIP, FAIRFIELD COUNTY, USE,
FISH HATCHERY PURPOSES.

COLUMBUS, OHIO, March 4, 1939.

HON. D. G. WATERS, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of a recent communication over the signature of Mr. H. F. West, Bureau of Administration in the Division of Conservation, with which there were enclosed for my examination and approval a certificate of title, warranty deed, contract encumbrance record No. 5 and other files relating to a parcel of land in Walnut Township, Fairfield County, Ohio, which is owned of record by George L. Hill, Dale E. Hill, Wilma Allen and Wilford Hill, and which is being acquired by the Conservation Council for and in the name of the State of Ohio for fish hatchery purposes. The parcel of land above referred to is further and more particularly described as follows:

Being part of the Southwest quarter of Section Number
Nine (9), Township Number Sixteen (16), Range Number

Eighteen (18), and being all of that part of the Twenty-nine and seventy-two hundredths (29.72) acre tract of land now owned by George L. Hill, et al., that is situated west of the right of way of the T. & O. C. Division of the N. Y. C. and St. L. Ry., being described and bounded as follows:

Beginning at the Southwest corner of said 29.72 acre tract, said corner being in the south line of Section Number Nine (9), and 25.42 chains west of the intersection of the south and $\frac{1}{2}$ section line of Section Number Nine (9); thence north $23\frac{1}{2}^{\circ}$ East, 8.62 chains to a stake; thence North 25° East, 5.95 chains to the northeast corner of said 29.72 acre tract; thence East with the north line of said 29.72 acre tract, 0.76 chains to the west right of way line of T. & O. C. Division of the N. Y. C. & St. L. Ry.; thence in a southerly direction with said right of way line to the intersection with the south line of Section Number nine (9); thence West 3.8 chains with said south line to the place of beginning, containing two (2) acres, more or less.

Upon examination of the certificate of title and other files therewith submitted, I find that said George L. Hill, Dale E. Hill, Wilma Allen and Wilford Hill, as tenants in common, have a good and indefeasible fee simple title to the above described parcel of land and that they own and hold the same free and clear of all encumbrances except such as are noted in the certificate of title and which may or may not affect the two-acre parcel of land above described. As to this, it is noted that this two-acre tract of land which is being acquired by the Conservation Council for the purpose above stated, is a part of a larger tract of 29.72 acres of land which is owned of record by the above named persons. In this connection, it is noted in the certificate of title that at page 376 of Book 35 of the Lease Records of said county there is shown an indenture of lease executed presumably by the above named owners of this property or by their predecessors in title by which there was granted to The Ohio Power Company the right to construct and operate lines for transmission of electric power and telephone or telegraph lines in and over this tract of land. There is nothing in the certificate of title or in any of the other files submitted to me to indicate to what extent, if at all, any electric power, telephone or telegraph lines constructed in and over this larger tract of land will affect the smaller parcel of two acres which is a part of said larger tract and which is being acquired for the purpose above stated.

The same observation may be made with respect to a deed which is of record at page 579 of Book 165 of the Deed Records of said county, by which an easement was granted to The Ohio Power Company granting to said company a right of way in and over said larger tract of land to construct a line of poles and wires for the purpose of transmitting elec-

tric power and to relocate the same. As with respect to the electric power and other lines first above referred to, there is nothing in the files submitted to me to show whether such lines will affect the two-acre parcel of land here in question or the use which your department desires to make of the same.

In addition to the matters above referred to, the certificate of title notes that "The taxes assessed on the Duplicate for 1939, the amount as yet undetermined, are a lien upon said premises." I am at a loss to know just what is meant by this statement. The taxes on this property for the year 1939 are not yet a lien on the property and would not become a lien until the day preceding the second Monday in April, 1939, to wit, on April 9, 1939. It is possible that the notation made in the certificate of title is as to the taxes for the year 1938, the taxes for the first half of which were due and payable December 20, 1938. However, the amount of the taxes on the property for the year 1938, although they may not be yet paid, should be determined by this time. In any event, any taxes which on further investigation you find to be a lien on this property should be paid before the transaction is closed for the purchase of the property.

In this connection, the certificate of title shows a mortgage in and for the sum of \$1,000.00 on the 29.72-acre tract of land above referred to which, as above noted, includes the two-acre tract here under investigation. This mortgage is now owned and held by one Lizzie A. Huston who has executed a release of said mortgage as to the two-acre tract of land above described. This release, which has been properly executed in the manner provided by law, is effective to relieve the two-acre parcel of land here under investigation from the lien of said mortgage. However, it does not appear that this partial release of said mortgage has been filed for record in the office of the Recorder of Fairfield County and this should be done before or at the time the transaction for the purchase of this property is closed by your department.

Upon examination of the warranty deed tendered by said George L. Hill, Dale E. Hill, Wilma Allen and Wilford Hill, the owners of the above described property, I find that said deed has been properly executed and acknowledged by said grantors and by the respective spouses of such of said grantors as are married. I further find on examination of this lease that the form of the deed is such that the same is legally sufficient to convey the above described property to the State of Ohio by fee simple title, free and clear of the inchoate dower interests of the spouses of the grantors above referred to and with a covenant of warranty therein contained that the property is conveyed to the State of Ohio free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 5, which has been submitted as a part of the files relating to the purchase of the above described property, has been properly executed and the same shows a sufficient balance

in the appropriation account now standing to the credit of the Division of Conservation under Item G-1 Lands (Buckeye Lake Hatchery) to pay the purchase price of this property, which purchase price is the sum of \$200.00. It further appears by way of recital in said contract encumbrance record, as well as by certificate of the Controlling Board, that the purchase of this property has been duly approved by said Board pursuant to the request of the Conservation Council of Ohio, which body, it appears, authorized the purchase of this property by resolution under date of April 27, 1938.

I am herewith returning said certificate of title, warranty deed, contract encumbrance record and other files, all of which are hereby approved, for your further attention in closing the transaction for the purchase of this property by the issuance of voucher in proper form covering the purchase price of this property.

Respectfully,

THOMAS J. HERBERT,

Attorney General.