

381.

APPROVAL—LEASE AS GAME AND BIRD REFUGE IN UNION TOWNSHIP, ATHENS COUNTY, OHIO, BY EMMA W. WERNER.

COLUMBUS, OHIO, April 1, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease No. 2383, executed by one Emma W. Werner of Athens County, Ohio, to the State of Ohio, on a parcel of land in Union Township, Athens County, Ohio, containing 104 acres of land. By this lease, which is one for a term of five years, this land is leased and demised to the state solely for state game refuge purposes; and it is noted in this connection that acting under the provisions of Section 1435-1 and other related sections of the General Code, the Conservation Council, acting through you as Conservation Commissioner, has set this property aside as a state game and bird refuge during the term of said lease.

Upon examination of this lease, I find that the same has been properly executed and acknowledged by said lessor and by the Conservation Council acting on behalf of the state through you as Commissioner.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

381.

APPROVAL—WARRANTY DEED, ABSTRACT OF TITLE, ETC., IN GREENE TOWNSHIP, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, April 2, 1937.

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

DEAR SIR: You have submitted for my examination and approval certificate of title No. 56,998 executed by The Northern Ohio Guarantee Title Company of Akron, Ohio, certain deeds, hereinafter referred to,

contract encumbrance record No. 22 and other files relating to the proposed purchase of lots Nos. 7 and 8 in C. C. McCue's Little Farms Allotment in the west half of the northwest quarter of Section 19 of Green Township, Summit County, Ohio, as surveyed by S. C. Swigart and Son and recorded in Plat Book 36, page 7, Summit County Records, together with all hereditaments and appurtenances thereof, but subject to all legal highways and easements of record.

From the certificate of title submitted to me, which certificate of title was executed under date of March 2, 1937, it appears that said lots stand in the name of one Augusta M. McCue and that so far as is shown by the records of said county, she owned and held the legal title to these lots at the time of her death February 18, 1937, subject, however, to a sale of these lots made by her as administratrix of the estate of her deceased husband, C. C. McCue, to Steve Mitseff and Fota Mitseff under date of March 14, 1930. It does not appear that these lots were ever conveyed to Steve Mitseff pursuant to the sale of the lots to them here referred to, but it does appear that under date of June 2, 1931, Augusta M. McCue, as executrix of the estate of C. C. McCue, deceased, conveyed these two lots by separate deeds to one Lillian Olsen "assignee of Steve Mitseff and Fota Mitseff." The State of Ohio, through you as Director of Public Works, is purchasing these lots of Lillian Olsen as property needed by your department in connection with the Nimisila Creek Basin Reservoir Project.

Although in the description of lots 7 and 8 in C. C. McCue's Little Farms Allotment, as the same is set out in the separate deeds which have been tendered to the state by Lillian Olsen, there is no exception or reservation with respect to the parts of these several lots which are included within the right of way granted by Charles A. Smith, a former owner of this and other property in the west half of the northwest quarter of said Section 19, to The Canton, Massillon and Akron Railroad Company, the certificate of title submitted to me indicates that a part of each of these lots is now owned and held by said railroad company or by its successor in title. From the certificate of title it appears that the tract of land now included in Lots Nos. 7 and 8 in C. C. McCue's Little Farms Allotment above described was formerly owned by Charles A. Smith as a part of a larger tract of eighty-two acres, more or less, then owned by him, and that on August 14, 1901, he, together with his wife, Matilda Smith, executed a warranty deed in and by which he granted and conveyed to The Canton, Massillon and Akron Railroad Company by apparent fee simple title a strip of land sixty feet wide extending in a northerly and southerly direction through said eighty-two-acre tract of land and through the smaller tract which is now Lots Nos. 7 and 8 in C. C. McCue's Little Farms Allotment. By information

which comes to me otherwise than from this certificate of title, I am advised that this sixty-foot strip of land which has been excepted from the tract above described is now owned and held by The East Ohio Gas Company and that arrangements are to be made whereby the state is to acquire the interest of The East Ohio Gas Company in this strip of land extending as it does now throughout the whole length of the C. C. McCue's Little Farms Allotment.

Exceptions which I have noted to the title of Lillian Olsen in and to the above described tract of land are as follows:

1. On March 16, 1907, Charles A. Smith, then the owner of the above described and other lands included within what is now the C. C. McCue's Little Farms Allotment, executed an instrument in deed form in and by which he conveyed to one Charles E. Wise an easement for the erection of a telephone line, together with the necessary poles, wires and other equipment, which was to be erected along the highway on the westerly line of the grantor's premises and along the easterly side of said highway. I am not advised by the certificate of title or otherwise as to what, if anything, was done by said Charles E. Wise or by his successors in interest under this easement with respect to the construction of a telephone line or otherwise. You or your engineers and agents in charge of the construction of this project are doubtless advised of this easement and of any telephone line construction pursuant to the same.

2. On November 13, 1908, said C. A. Smith, being the owner of the eighty-two-acre tract of land above referred to, executed an instrument in and by which he conveyed to The Tide Water Pipe Company, Limited, a right of way for the construction and maintenance of pipe lines and of a telegraph line over and through said lands. There is nothing in the certificate of title to indicate how the particular tract of land here in question and above described is affected by this easement or by any pipe line or telegraph line which may have been constructed pursuant to the same. With respect to this matter as with respect to that above noted, you and your designated engineers and agents in charge of this project are doubtless advised as to the situation in connection with the easement here referred to.

3. On August 16, 1928, C. Clifton McCue, who then owned the eighty or eighty-two-acre tract of land formerly owned by C. A. Smith and above referred to, executed an oil and gas lease to The East Ohio Gas Company in and by which there was granted to said company the right to the oil and gas in said eighty-acre tract of land for a term of five years and so much longer as oil or gas or their constituents might be found in and upon said premises. There is nothing in the certificate of title or in any of the other files submitted to me which indicates what, if any, developments for oil or gas have been made upon the

above described tract of land which was and is included within the larger tract of land covered by this lease.

4. It appears from the certificate of title that on March 29, 1932, The Real Estate Mortgage Company of Akron, Ohio, recovered a judgment against Augusta M. McCue in the sum of \$971.88, plus interest and costs, and at the same time secured a decree for the foreclosure of a mortgage on premises other than those above described. Later, on August 24, 1934, an execution was issued on said judgment which was directed to the Sheriff of Summit County and which was on August 25, 1934, levied by him on the premises above described and upon other lands standing in the name of Augusta M. McCue. In this connection, it will be recalled that C. Clifton McCue, who formerly owned this property and laid out C. C. McCue's Little Farms Allotment, of which the lots above described are a part, died on December 18, 1928, and that by his last will and testament he devised the lots here in question and all other real and personal property owned by him at the time of his decease to his wife, Augusta M. McCue. However, it appears that at the time The Real Estate Mortgage Company recovered its judgment against Augusta M. McCue, above noted, the lots here in question had been sold by Augusta M. McCue, as executrix of the estate of her husband, on an order of the court made in a proceeding instituted by her in the Probate Court of Summit County for the purpose of selling this and other property owned by C. Clifton McCue at the time of his death for the purpose of paying the debts of his estate. It appears that these particular lots were sold by said executrix to Steve Mitseff and Fota Mitseff on or some time prior to June 26, 1930, and that upon this date the sale of these particular lots was confirmed by the court. The deeds that were executed by the executrix pursuant to this sale were not executed to Steve Mitseff and Fota Mitseff, however, but were executed by said executrix under date of June 2, 1931, to Lillian Olsen, assignee of Steve Mitseff and Fota Mitseff. Assuming that Lillian Olsen obtained a valid assignment from Steve Mitseff and Fota Mitseff of the rights which they had to a conveyance of these lots to them pursuant to said order of sale and sale, Lillian Olsen owned and held the title to these lots prior to the time the Real Estate Mortgage Company obtained its judgment against Augusta M. McCue and, of course, prior to the time when the execution, above referred to, was levied upon the lots here in question and upon other property standing in the name of Augusta M. McCue. In this connection and aside from the fact that the proceeding then pending in the Probate Court of Summit County for the sale of this and of other property owned by C. Clifton McCue at the time of his death and which passed to Augusta M. McCue by his last will and testament, was a *lis pendens*

as to The Real Estate Mortgage Company and to all other persons, the fact that these lots had been conveyed to Lillian Olsen by Augusta M. McCue, as executrix of the estate of her deceased husband, removed these particular lots from the operation of the judgment and execution thereafter obtained and issued against August M. McCue. And this conclusion is not affected by the fact that Lillian Olsen did not file the deeds thus executed to her by said executrix, for record in the office of the Recorder of Summit County, Ohio. *Wright vs. Franklin Bank*, 59 O.S., 80; *Dow vs. The Union National Bank*, 87 O.S., 173. I am inclined to the view, therefore, that this exception may be safely waived in the consideration of the title of Lillian Olsen in and to the lots and parcels of land here in question.

5. It appears further from the certificate of title that some time prior to March 28, 1934, The Brown-Graves Company obtained a judgment against C. C. McCue and Augusta McCue by consideration of the Municipal Court of Cleveland, Ohio, in the sum of \$368.00 and costs and that on said date an execution was levied by the Sheriff of Summit County upon these lots and upon other lands owned of record by Augusta M. McCue. The same observations may be made with respect to this exception as those which I have made with respect to the judgment against Augusta M. McCue noted in exception No. 4 and in this view the judgment and execution here referred to are not a lien upon the property here in question.

6. It appears from the abstract that some time prior to December 20, 1926, an assessment was levied on each of these lots for the improvement of the South Main Street Road, which assessments were each made payable in twenty semiannual installments of \$10.41 each. It appears further that the status of said assessments are as follows:

Delinquent assessments of former years and penalties thereon on both of these lots, amounting in the aggregate to the sum of \$402.37, are a lien upon these lots.

Assessment installments for the first half of the year 1934, amounting to \$20.82, are delinquent and, together with penalties amounting to \$2.08, are a lien upon these lots.

The same is true with respect to the assessment installments on these lots for the last half of the year 1934.

In addition to this, it appears from the certificate of title that the assessment installments for 1935 are unpaid and are, of course, a lien upon the property.

In addition to this, it may be assumed that the assessment installments on these lots for the year 1935 are unpaid.

Needless to say, you and your representatives in charge of negotiations for the purchase of this property should see that the unpaid assessments upon these lots, together with penalties thereon, are paid before the transaction for the purchase of this property is closed.

7. The following is stated in the certificate of title with respect to the general taxes upon these lots:

McCue Little Farms Add. Lot 7 All.

Valuation: Lands \$240.00, Buildings \$..... Total \$240.00.

Delinquent Taxes of former years and penalty, amounting to \$38.88, are a lien.

Taxes for the first half of 1934, amounting to \$2.39, are delinquent; penalty 24 cents.

Taxes for the last half of 1934, amounting to \$2.39, are delinquent; a penalty of 10% will be added to this amount.

Taxes for 1935 are a lien.

McCue Little Farms Add. Lot 8. All.

Valuation: Lands \$240.00, Buildings \$..... Total \$240.00.

Delinquent Taxes of former years and penalty, amounting to \$38.84, are a lien.

Taxes for the first half of 1934, amounting to \$2.39, are delinquent; penalty 24 cents.

Taxes for the last half of 1934, amounting to \$2.39, are delinquent; a penalty of 10% will be added to this amount.

Taxes for 1935 are a lien.

In addition to this, it may be assumed that the taxes on these lots for the year 1936 are likewise unpaid and the same are a lien upon the property. In this case, as with respect to exception No. 6 above noted, your representative in charge of the acquisition of this property should see that these taxes are paid when you have closed the transaction for the purchase of the property.

In addition to the certificate of title, you have submitted to me two deeds executed by Augusta M. McCue, as executrix of the estate of C. Clifton McCue, deceased, in and by which lots Nos. 7 and 8 of C. C. McCue's Little Farms Allotment, respectively, are conveyed to Lillian Olsen; and you have likewise submitted to me two deeds executed by Lillian Olsen, an unmarried person, for the purpose of conveying these respective lots 7 and 8 of C. C. McCue's Little Farms Addition

to the State of Ohio. I am unable to approve the deeds executed by Augusta M. McCue purporting to convey these respective lots to Lillian Olsen in the absence of record evidence of the assignment by Steve Mitseff and Fota Mitseff to Lillian Olsen of their rights under the order of sale and sale of these lots made to them by said executrix. If this record evidence is supplied and made a part of the certificate of title these deeds thus executed by the executrix and acknowledged in the manner required by law and the form of the same are such that each of the same is legally sufficient to convey these respective lots to Lillian Olsen, the grantee therein named.

The deeds executed by Lillian Olsen for the purpose of conveying lots 7 and 8 of G. C. McCue's Little Farms Allotment to the State of Ohio, respectively, have been properly executed and acknowledged by said grantor and the form of one of these deeds, to-wit, that conveying lot No. 7 above referred to, is in such form that the same is legally sufficient to convey this lot to the State of Ohio by fee simple title. The other deed is fatally defective for the reason that the State of Ohio is not named therein as the grantee of the deed. This is doubtless a mere oversight and should, of course, be corrected.

Contract encumbrance record No. 22, which has been submitted as a part of the files relating to the purchase of the two lots here in question, has been properly executed and the same shows a sufficient balance, otherwise unencumbered, in the appropriation account to the credit of your department to pay the purchase price of these lots, which purchase price in the aggregate is the sum of \$1800.00. It likewise appears from a recital contained in said contract encumbrance record, as well as from other information at hand, that the purchase of these lots has been approved by the Controlling Board and that the money necessary to pay the purchase price thereof has been released by said Board.

I am herewith returning to you said certificate of title, the two deeds above referred to executed by Augusta M. McCue, as executrix of the estate of C. Clifton McCue, and the two deeds executed by Lillian Olsen. I am likewise enclosing herewith contract encumbrance record No. 22 and other files submitted to me in connection with my consideration of this matter.

Respectfully,

HERBERT S. DUFFY,
Attorney General.