

1783.

APPROVAL, ABSTRACT OF TITLE TO LAND OF GEORGE C. MATTHES,
IN THE CITY OF SANDUSKY, ERIE COUNTY, OHIO.

COLUMBUS, OHIO, February 29, 1928.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication under date of February 27, 1928, enclosing corrected warranty deed and corrected abstract certified under date of February 21, 1928, covering lands and premises described as follows:

“Situated in the City of Sandusky, in the County of Erie, and State of Ohio, and being in that part of water lots thirty-seven (37) and thirty-eight (38) lying northerly of the northerly line of Railroad Street in said City, more particularly described as follows:—

Being all that part of said water lot thirty-seven (37) that lies northerly of the northerly line of said Railroad Street and all that part of said water lot thirty-eight (38) that lies northerly of the northerly line of said street except the following portion of water lot number thirty-eight (38):

Beginning at a point in the northerly line of said Railroad Street 84.00 feet easterly, measured in said street line, from the westerly line of lot number forty (40); thence westerly in said northerly line of said Railroad Street 16.75 feet to an iron pipe monument set at the southwesterly corner of said lot number thirty-eight (38); thence northerly in the westerly line of said lot number thirty-eight (38) a distance of 351.58 feet to the northerly face of the new dock; thence easterly at right angles to the westerly line of said lot number thirty-eight (38) a distance of 17.75 feet; thence southerly 350.08 feet to the place of beginning.

Together with the riparian rights pertaining or belonging to the above described premises.”

The title to the above described lands and premises was the subject of Opinion No. 1671 of this department under date of February 3, 1928. The corrected abstract contains no further information with respect to the matters noted in exception No. 1 of said former opinion. Owing however to the great lapse of time since the occurrence of the matters noted in said exception, and the fact that the lands in question have been held continuously and adversely by successive grantees under color and claim of right, the exception above noted can now be safely waived.

The exceptions Nos. 2 and 3 in said former opinion have been corrected by further information which has been made a part of the abstract. It does not appear that any further proceedings have been had in the case of *Lillian Sherman vs. George C. Matthes* noted at page 73 of the abstract. As to this case, I am required to advise you, as was done in my former opinion, that any judgment rendered against said George C. Matthes in said pending action at any time during the present term of the Common Pleas Court of Erie County will operate as a lien on the premises under investigation and other property owned by Mr. Matthes on January 9, 1928, which was the first day of the present term of said court. If it is your desire to close the transaction with respect to the purchase of this property before the expiration of the present term of the Common Pleas Court

of Erie County you can probably make some arrangement with Mr. Matthes whereby he can protect the State of Ohio against the lien of any judgment rendered during the present term of said court, and which, as above noted would relate back to the first day of said term.

As noted in said former opinion, it appears from the corrected abstract that the taxes for the last half of the year 1927 which amount to the sum of \$40.89 as against lot No. 37, and \$10.89 against lot No. 38 are unpaid and a lien.

The corrected abstract does not show any leases outstanding against said premises or any part thereof. In this connection it may be observed that if any person other than the owner, George C. Matthes, is in actual possession of the premises under investigation or any part thereof, under any color or claim of right, the State of Ohio as a purchaser of said premises will be required to take notice of the rights of such person, whatever they may be.

It may be further observed that any purchaser of these premises is required to ascertain whether or not any person or persons are furnishing labor or material on any building or structure on said premises or whether they have done so within the statutory time within which a mechanic's lien might be perfected on said premises.

Subject to the above noted exceptions which can be adjusted by you at the time the transaction for the purchase of these lands is closed, I am of the opinion that said George C. Matthes has a good and merchantable fee simple title.

I am herewith returning with my approval the deed executed by said George C. Matthes and Ethel N. Matthes his wife, conveying to the State of Ohio the premises under investigation. The same has been properly executed and is in form sufficient to convey to the State of Ohio a fee simple title in said lands.

Your attention is called to the fact that no encumbrance estimate accompanied the corrected abstract submitted to me, but I assume that such encumbrance estimate is in your possession and that the same shows the proper certificate of the Director of Finance showing that there are unencumbered balances sufficient to cover the purchase price of said property. I note what you say in your communication with respect to the approval of the Controlling Board, and assume that the purchase price of said property does not exceed the amount so approved by the Controlling Board for the purchase of this property. I am returning herewith the corrected deed and corrected abstract covering the property under investigation.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1784.

TREES—DIRECTOR OF HIGHWAYS CANNOT EXPEND FUNDS TO CARE FOR TREES AND SHRUBS LOCATED WITHIN STATE HIGHWAYS.

SYLLABUS:

The Department of Highways is not authorized to expend any of the funds of the highway department for the purpose of caring for trees and shrubs located within state highways, there being no appropriation of money to the department for that purpose.

COLUMBUS, OHIO, February 29, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion, as follows: