

"If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution."

This, in my view, is dispositive of what I shall consider to be your first question.

I come then to the question of whether or not an elector may be permitted to vote in the affirmative on both of these plans and whether or not in the event of such vote, it should be counted in each case. Article II, section 1g of the Constitution contains detailed steps for the submission to the electors of questions under the initiative and referendum. It is contemplated that several questions may be submitted to the electors at the same election, that ballots shall be printed "as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law or proposed amendment to the constitution." I find nothing in this section to prohibit a voter from voting upon each question so submitted in any manner in which he may desire. Nor does section 1b of Article II, *supra*, contain such inhibition. The only effect of an affirmative vote upon each of two such measures which are conflicting would be to cause one more vote for each measure to be counted, thereby assisting in the approval of each measure. By counting such votes, the will of the voter is obviously given effect.

It is, accordingly, my opinion in specific answer to your questions that:

1. In the event there are to be submitted to the electors of a municipality which has adopted a charter plan of government under Sections 7 and 8 of Article XVIII of the Constitution of Ohio, two conflicting amendments to that charter both of which are approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the amendment to the charter in the absence of a charter provision to the contrary.
2. A voter may vote in the affirmative for each such conflicting amendment and his vote should be counted in each case.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3627.

APPROVAL, ABSTRACT OF TITLE TO LAND OF HAROLD R. HUKILL  
AND RUTH L. HUKILL, IN ROSS COUNTY, OHIO.

COLUMBUS, OHIO, October 3, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—Under date of May 11, 1931, Opinion No. 3215 was rendered to you analyzing the status of title of 439 acres of land in Ross County proposed

to be purchased by the State of Ohio from Harold R. Hukill and Ruth L. Hukill, his wife.

In the former opinion, it was pointed out that five of the grandchildren of Governor Duncan McArthur had an interest in part of the land in question which, as far as was shown by the abstract, had never been by them conveyed away. Upon a re-examination of the records, the abstractor discovered a deed from said grandchildren to parties who are predecessors in title to Mr. Hukill, thus clearing up this defect. A description of said deed has been added as pages 13, 14 and 15 of the last supplement of the abstract.

In the former opinion, it was also pointed out that one of the owners in the chain of title, Sarah Ann McDaniel, had executed a deed in which the grantor's husband neither joined throughout the instrument nor released his dower. Information has been furnished that said husband has been dead for many years. Besides, the record shows that said husband did, at least, sign his name to the instrument, which was filed for record January 21, 1904. The defect is therefore cured by section 8516-1, General Code, which provides:

"When any deed heretofore or hereafter executed and recorded, conveying real estate, shall have been or shall be of record in the office of the recorder of the county within this state in which such real estate is situated, for more than twenty-one years, and the record thereof shows that there is a defect in such deed for any one or more of the following reasons: Because the name of the husband or wife does not appear in the body of the deed or in all the clauses thereof but both signed and acknowledged such deed; \* \* \* such deed and the record thereof shall be cured of such defects and be effective in all respects as if such deed had been legally made, executed and acknowledged, provided, however, \* \* \*."

The possibility, as pointed out in the former opinion, of a dower right existing in a widow of Milton Lee Clark is eliminated by a declaration in an affidavit by Wade J. Beyerly, which affidavit is attached at the end of the abstract, to the effect that said Clark is now dead and that he never was married.

It was also indicated in the opinion rendered to you that, in September, 1922, the owners of the caption land made a lease to one Glen R. Fishpaw for a period of five years with the right of renewal for an additional five years, and that the abstract did not show whether or not the lease had been renewed. Mr. Hukill has furnished an affidavit which is attached to the end of the abstract, stating that said lease was not renewed and that the lessee is no longer in possession of the premises. Hence, this possible defect in the title is also eliminated.

The right existing in the Ohio Utilities Company to construct and maintain lines for the transmission of electricity over part of the caption land has been called to your attention. I find no reason for making any legal objection to acquiring the land subject to this right of way. If it sees fit, within its discretion, the Board of Control of the Ohio Agricultural Experiment Station may acquire these lands subject to said right of way.

The several slight errors which crept into the original draft of the proposed deed to the State have been satisfactorily corrected. The status of the taxes has already been brought to your attention.

Enclosed please find the abstract of title and the proposed deed to the State.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*