

4745.

APPROVAL, ABSTRACT OF TITLE TO LAND OF KATE McMAHON IN
ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, November 17, 1932.

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

DEAR SIR:—Under date of March 25, 1932, Opinion No. 4185 was directed to you, analyzing an abstract of title in reference to a tract of land situated in Jefferson and Green Townships, Adams County, Ohio, which is under consideration of purchase by the State of Ohio from one Kate McMahon. As pointed out in said opinion, said abstract contained so many errors as to be practically worthless. Recently a wholly new abstract of title, made by another abstractor, was submitted to me for examination, and said new abstract, certified under date of September 7, 1932, by W. R. Sprague of Portsmouth, Ohio, and containing an addendum certified by the same person under date of October 29, 1932, reveals that said Kate McMahon has a good and merchantable fee simple title to said land, subject to certain delinquent taxes which are enumerated on the last page of the abstract just before the addendum. It appears that some of the taxes were certified as delinquent in 1923 and that others were certified as delinquent in 1929. The abstract does not make any statement as to the taxes for the years of 1930, 1931 and 1932, but presumably they too are a lien upon the property.

It is to be noted that the present description used in the caption of the new abstract varies to some extent from the description of the same property as found in some of the important links in the chain of title, namely, the deeds made by Sheriff W. W. White of Adams County, Ohio (see section 12, abstract), on November 18, 1927, to one C. W. G. Hannah. This new description was used at the suggestion of Mr. John H. Hawkins, Assistant State Forester, who, in an affidavit which is herein enclosed, states that the new description is much better than the old one and that it describes the same property which is described in said sheriff's deeds but that it eliminates certain errors which crept into the description in said sheriff's deeds.

The description which should be used in the deed from said Kate McMahon to the State of Ohio, is the one which appears in Mr. Hawkins' affidavit with the exception of one slight change. The new abstract reveals that there are ten or twelve less acres in the tract to be conveyed to the State than the first abstract revealed. Thus, the deed from Minnie L. Himes to C. W. G. Hannah, in February 1922 (see section 10, abstract), which is an important link in the chain of title, discloses that the grantor excepted from the operation of said deed a tract of ten acres which she had theretofore sold to one Myrtle Fite. Said conveyance to said Myrtle Fite is more fully set out on page 7 of the addendum to the abstract, wherein it is described as being twelve acres. Inasmuch as the first abstract did not disclose the fact that said ten or twelve acres had been conveyed to said Myrtle Fite, said tract was not taken into account when the new description was made, and therefore, from the new description given in Mr. Hawkins' affidavit, there should be excepted and deducted said tract which was conveyed by Minnie L. Himes to said Myrtle Fite.

This opinion is confined to an analysis of said new abstract. The first abstract is to be disregarded. I am not undertaking herein to pass upon any of the other

papers in reference to this purchase inasmuch as I do not now have them before me, they having been returned to you along with my previous opinion.

Enclosed please find said new abstract of title and the original and a copy of said affidavit made by said John H. Hawkins. Under separate cover, I am sending to you a sketch of the land in question made and furnished to me by said Mr. Hawkins.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4746.

APPROVAL, LEASE TO CANAL LANDS IN ROSS COUNTY, OHIO.

COLUMBUS, OHIO, November 17, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you enclose for my examination and approval a certain lease in triplicate by which there is leased and demised to one Arthur J. Jones, of Chillicothe, Ohio, a certain parcel of abandoned Ohio canal lands situated in Franklin Township, Ross County, Ohio, which parcel of land is more particularly described as follows:

“Being the full width of the bed and banks of said canal property beginning at the southerly line of Coon Creek, being the southerly end of a lease granted to John A. Poland of Chillicothe, Ohio, under date of November 16th, 1923, at or near station 414+40, of the W. O. Sanzenbacher survey of said canal property, and running thence southeasterly with the lines of said canal property five hundred thirty (530') feet, more or less, as measured along the transit line of said survey to Station 409+10 of said survey, being the northerly end of a lease granted to Russell McCorkhill, under date of September 16, 1924, and containing one (1) acre, more or less. Reserving therefrom any portion thereof that may be occupied by a state or county highway.”

The lease here in question is one for a term of fifteen years, and provides for an annual rental of Six Dollars, payable in semi-annual installments. This lease is executed under the authority of an Act of the General Assembly, approved by the Governor under date of June 7, 1911, (102 O. L. 293) which Act provided for the abandonment for canal purposes, of that part of the Ohio canal between Buckeye Lake and Portsmouth, Ohio; which Act provides for the sale or lease of such abandoned canal lands in conformity with general statutory provisions relating to the sale or lease of canal lands in this state.

Upon examination of this lease I find that the same has been properly executed by the Superintendent of Public Works as Director of said department and by the lessee above named. From an examination of the provisions of this lease and of the conditions and restrictions therein contained, I find that the