

28.

DISCUSSION OF ABSTRACT OF TITLE, ETC., TO LAND OWNED BY FREDERICK L. ALLYN, ERIE TOWNSHIP, OTTAWA COUNTY, OHIO.

COLUMBUS, OHIO, January 22, 1937.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: You have recently submitted to this office for examination and approval an abstract of title, warranty deed, contract encumbrance record No. 193 and other files relating to the proposed purchase by and in the name of the State of Ohio of a tract of land owned of record by one Frederick L. Allyn in Erie Township, Ottawa County, Ohio, and which is described in the option which you obtained from the owner for the sale and purchase of this land and in the deed which has been tendered to the state by said Frederick L. Allyn, as follows:

Situated in the Township of Erie, County of Ottawa and State of Ohio and known as and being the east part of the southwest quarter of Section No. Twenty-eight (28), Town Seven (7), North Range Sixteen (16), being all of said southwest quarter lying north of the public highway known as Ohio State Route No. 2, except that part thereof heretofore conveyed to the United States of America by deeds dated May 29, 1918, and October 12, 1918, and recorded respectively in Volume 79 at page 113 and in Volume 79 at page 270, Ottawa County Deed Records.

Also excepting that part thereof heretofore conveyed to Myrtle Moore by warranty deed dated March 31, 1919, and recorded in Volume 79 at page 467, Ottawa County Deed Records.

Also excepting and subject to a right of way of the Lake Shore & Michigan Southern Railway Company over and across a strip of land thirty (30) feet wide immediately west of and adjoining the east line of said premises.

The first question presented on a consideration of the abstract of title in connection with the deed tendered by Frederick L. Allyn to the State of Ohio is whether the state upon acceptance of this deed and the payment of the purchase price of this land, will obtain title to all of the land indicated by the description of the property as the same is set out in this deed. It is noted that by the description of the property contained

in the deed there is thereby conveyed to the state all of that part of the southwest quarter of Section 28, Town 7 North, Range 16, north of the public highway known as Ohio State Route 2, except parts of said land theretofore conveyed to the United States of America by the deeds therein referred to, except and subject to the right of way of the Lake Shore & Michigan Southern Railway Company and except "that part thereof heretofore conveyed to Myrtle Moore by warranty deed dated March 31, 1919, and recorded in Volume 79 at page 467, Ottawa County Deed Records." The question here presented is whether this deed under date of March 31, 1919, conveyed to Myrtle Moore all of the land which she now owns and holds of record in the southwest quarter of Section 28 north of said highway. In this connection, it is noted that Frederick L. Allyn and Myrtle Moore, his sister, obtained title to the whole of the southwest quarter of Section 28 (and of other lands) by inheritance from their father Charles L. Allyn who died some time in the year 1913. Some time after the death of Charles L. Allyn, to wit, on October 31, 1913, Myrtle Moore and Bertelle Moore, her husband, executed a quit claim deed to Frederick L. Allyn in and by which she released, remised and quit claimed to Frederick L. Allyn all of her right, title and interest in and to the southwest quarter of Section 28. Thereafter, on March 31, 1919, Frederick L. Allyn and Norma Allyn, his wife, executed the warranty deed to Myrtle Moore above referred to. By this deed there was conveyed to Myrtle Moore and to her heirs and assigns a tract of land in Erie Township, Ottawa County, Ohio, which was further described as:

Being a parcel of land commencing in the center line of the wagon road known as the Toussaint and Port Clinton road and on the line between the lands of the grantor and grantee herein; thence south in the east line of the lands of Myrtle Moore 270 feet; thence east parallel to the south line of Section Twenty-eight (28), 210 feet and 7 inches; thence north parallel to said east line of said Myrtle Moore's land 155 feet and 5 inches to the center of said wagon road; thence west in the center of said wagon road to the place of beginning, the east line of said parcel being the east line extended of the lands of the said Myrtle Moore lying north of said road and the west line of said herein described parcel, being the east line of the lands of the said Myrtle Moore lying south of said road, all being situated in the west half of the southwest quarter of Section Twenty-eight (28), Town Six (6), Range Sixteen (16) of said township.

In this connection, it is noted that prior to the execution of the deed under date of March 31, 1919, above referred to, Frederick L. Allyn executed two other deeds in and by which he conveyed to Myrtle Moore certain tracts of land all or a part of which is situated in the southwest quarter of Section 28. Thus, under date of October 31, 1913, Frederick L. Allyn conveyed to Myrtle Moore a tract of land which was described as:

“Being twenty acres of land situated in Section Twenty-eight (28) and Thirty-three (33) of said Erie Township and bounded as follows, to-wit: Commencing in the west section line of Section Twenty-eight (28) and in the center of what is known as the Locust Point Road; thence running south along the said section line between Sections Twenty-eight (28) and Twenty-nine (29) to the center of the creek; thence easterly in the center of the creek far enough that when a line is drawn north of the center of said road it will indicate twenty acres of land; thence westerly in the center of said road to the place of beginning.”

Again, under date of April 5, 1916, Frederick L. Allyn conveyed to Myrtle Moore a tract of land which was described in the deed as:

“Being the west twenty (20) acres of that part of the southwest quarter of Section Twenty-eight (28), Town Seven (7), Range Sixteen (16) which lies north of the County Road known as The Toussaint Road. The south line of said twenty acre parcel being the center of the said County Road and the north line of said twenty acres being the half section line bisecting said Section Twenty-eight (28). The west line is the west line of said Section and said East line of said twenty acres is parallel to the west line of said Section Twenty-eight (28) and drawn far enough east thereof to include twenty (20) acres within the boundaries herein set forth.”

There is nothing in the abstract of title or in any plat or other file submitted to me which indicates the identity of the road now known as State Route No. 2 with either of the roads mentioned in the land descriptions contained in the two deeds last above referred to; and, consequently, there is nothing in this abstract or other files to show what part, if any, of the lands in the southwest quarter of Section 28 conveyed to Myrtle Moore by either or both of these deeds is north of what is now known as State Route No. 2. If, as a matter of fact, either or both of these deeds last noted above conveyed to Myrtle Moore lands in the south-

west quarter of Section 28 north of what is now State Route No. 2, other than and in addition to that conveyed to her by the deed of March 31, 1919, above referred to, it would seem to follow that the recital in the option and in the deed tendered by Frederick L. Allyn that the tract of land to be sold and conveyed to the state in all of the southwest quarter of Section 28 lying north of the public highway known as Ohio State Route No. 2 except that part thereof conveyed to Myrtle Moore by said deed under date of March 31, 1919 (and except the parts conveyed to the United States), is incorrect. This question, which is one of fact, is submitted to you and to your engineers or other agents in charge to determine what the facts are with respect to the matter here suggested.

Assuming, however, that the option and tendered deed correctly describe the tract of land now owned by Frederick L. Allyn in the southwest quarter of Section 28 north of State Route No. 2 which is to be conveyed to the state, I find upon examination of the abstract of title that Frederick L. Allyn has a good and indefeasible fee simple title to this tract of land subject to the following liens and encumbrances which are here noted as exceptions to the title in and by which he owns and holds this tract of land:

1. On August 27, 1930, Frederick L. Allyn executed a deed or other similar instrument to the State of Ohio in and by which he granted to the state an easement for highway purposes in and over certain lands of the grantor in Section 28. This instrument contains a description by metes and bounds of the lands covered by this easement. However, in the absence of an adequate plat, I am unable to determine whether the land described in the easement constitutes any part of the tract of land here in question lying north of State Highway No. 2. You are doubtless advised of this easement and of any road construction that has been carried on pursuant to the same; and this easement is called to your attention solely for the reason that as a matter of law the same may be an encumbrance upon the tract of land here in question.

2. On November 21, 1932, Frederick L. Allyn and Norma L. Allyn, his wife, executed a mortgage deed to The American Bank of Port Clinton for the purpose of securing their promissory note of even date therewith in the sum of \$11,600.00 payable to said The American Bank of Port Clinton, Ohio. This mortgage has not been canceled of record and this mortgage is a lien upon the above described tract of land to the extent of the amount of money remaining unpaid upon the promissory note secured by said mortgage together with accrued interest thereon. Needless to say, provision should be made for the payment of the amount remaining due upon this promissory note and accrued interest thereon and for the cancellation of the mortgage before the transaction for the

purchase of this property is closed by the issue of voucher and warrant covering the purchase price of the property.

3. On August 10, 1934, The American Bank of Port Clinton, Ohio, recovered a judgment in the Court of Common Pleas of Ottawa County, Ohio, against said Frederick L. Allyn and Norma Allyn in the sum of \$839.12 with interest from August 10, 1934. This judgment and accrued interest thereon are a lien upon the above described property of Frederick L. Allyn and provision should be made for the payment in satisfaction of this judgment before the execution and delivery of the warrant covering the purchase price of this property.

4. On August 13, 1934, the American Bank of Port Clinton filed an action against Frederick L. Allyn and Norma Allyn for the foreclosure of the mortgage above noted. This action, which is Case No. 9612 on the docket of the Common Pleas Court of Ottawa County, is *lis pendens* with respect to the real property covered by the mortgage, the foreclosure of which is sought in said action and the State of Ohio as the prospective purchaser of the property here in question is charged with notice as to any judgment or order that may be made by the court in this case. It follows from this that provision should be made for the dismissal of this action before the state acquires title to the above described property and issues its warrant for the purchase price of the same.

5. It appears that Frederick L. Allyn has filed a petition in bankruptcy in the United States District Court for the Northern District of Ohio, at Toledo, Ohio. By this proceedings the above described tract of land here in question and all other lands of said Frederick L. Allyn covered by said mortgage and by the judgment above referred to have been brought within the jurisdiction of the United States District Court. In closing the transaction for the purchase of the above described tract of land, such land by proper judgment and order of the United States District Court should be released from the bankruptcy proceeding there pending before purchase of this property is consummated.

6. There is no complete statement in the abstract with respect to the taxes on this and other property owned of record by said Frederick L. Allyn. It is therein stated that taxes in the sum of \$301.84 "and taxes \* \* \* for the year 1933, the amount of which has not been computed, are a lien and unpaid." There is evidently an error in this statement found in the abstract and it is probable that what the abstracter intended to say was that the taxes for the year 1936 are a lien and unpaid in addition to delinquent taxes in the amount of \$301.84, as above stated. In this situation, it is suggested that a recheck be made in the office of the Treasurer of Ottawa County with respect to the taxes which are a lien upon this property; that a finding be made by the County Auditor segregating the amount of delinquent and current taxes to be apportioned

against the property which the state is purchasing; and that the full amount of the taxes thus segregated be paid before the transaction for the purchase of this property is consummated.

Assuming that Frederick L. Allyn owns all of the land lying north of Ohio State Route No. 2 in Section No. 28, Town 7 North, Range 16, except that previously conveyed therefrom by the deeds mentioned in the description of the property as the same is set out in the deed tendered to the state by Frederick L. Allyn and which has been submitted to me as a part of the files relating to the purchase of this property, I find that said deed should be, and the same hereby is approved. That is, I find that said deed has been properly executed and acknowledged by said Frederick L. Allyn and by Norma L. Allyn, his wife, and that the form of the deed is such that the same is legally sufficient to convey the property therein described to the State of Ohio by fee simple title free and clear of the inchoate dower interest of Norma L. Allyn, as the wife of said Frederick L. Allyn, and with a covenant of warranty that the property thereby conveyed is free and clear of all encumbrances whatsoever. It is noted in this connection that the deed contains an exception and reservation with respect to the barns on the premises conveyed by this deed and it is therein provided that the grantors in the deed may remove these barns on or before May 1, 1937.

Upon examination of contract encumbrance record No. 193, which has been submitted as a part of the files relating to the purchase of the property here in question, I find that said contract encumbrance record has been properly executed in accordance with the provisions of section 2288-2, General Code, and the same shows that as of the date of its execution, to wit, November 27, 1936, there was a sufficient unencumbered balance in the appropriation account to the credit of your office or department to pay the purchase price of this property, which is the sum of \$12,150.00. In this connection, it is noted that this contract encumbrance record does not bear the signature of the Director of Public Works evidencing his approval of the purchase of this property. In view of the provisions of section 154-40, General Code, authorizing the Director of the Department of Public Works to purchase all real estate required by the state government, or any department, office or institution thereof, it is suggested that before this contract encumbrance record and other files are submitted to the Auditor of State with your voucher covering the purchase price of the property, the approval signature of the Director of Public Works to this contract encumbrance record be secured. This will obviate any question with respect to the authority of the Auditor of State to issue his warrant covering the purchase price of the property. In addition to contract encumbrance record No. 193, which covers the purchase price of the property here in question, you have submitted

contract encumbrance record No. 238 in and for the sum of \$750.00 which is an additional amount of money to be paid to Frederick L. Allyn covering the cost and expense of moving the barn or barns now on these premises. This contract encumbrance record has been properly executed and the same shows a sufficient unencumbered balance in the appropriation account to cover said sum of \$750.00 which is to be paid to Frederick L. Allyn for the purpose above stated. It is noted from recitals contained in these contract encumbrance records as well as from the certificate of the Controlling Board made a part of these files, that said Board has approved the purchase of this property and has released from the appropriation account the amount of money necessary to pay for this property and to pay to Frederick L. Allyn said additional sum of \$750.00 covering the cost and expense of removing these barns.

I am herewith returning to you for your further consideration with respect to the matters herein noted, the abstract of title, warranty deed, contract encumbrance records and other files submitted to me in connection with the proposed purchase of this property.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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29.

APPROVAL—BONDS OF BETHESDA VILLAGE SCHOOL DISTRICT, BELMONT COUNTY, OHIO, \$60,000.00.

COLUMBUS, OHIO, January 23, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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30.

APPROVAL—TWENTY-SEVEN GRANTS OF EASEMENT TO LAND IN RICHLAND, TULLY, SCOTT, CLARIDON AND WALDO TOWNSHIPS, MARION COUNTY, OHIO.

COLUMBUS, OHIO, January 23, 1937.

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

DEAR SIR: You have submitted for my examination and approval certain grants of easement executed to the State of Ohio by several prop-