

597.

APPROVAL, NOTES OF MONROE TOWNSHIP RURAL SCHOOL DISTRICT, PUTNAM COUNTY—\$65,000.00.

COLUMBUS, OHIO, July 5, 1929.

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

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598.

APPROVAL, WATERWORKS BONDS OF THE VILLAGE OF SPENCERVILLE, ALLEN COUNTY—\$50,000.00.

COLUMBUS, OHIO, July 5, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

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599.

DEEDS—MINISTERIAL LANDS—AUTHORIZED BY SENATE BILL NO. 95, 88TH GENERAL ASSEMBLY—SHOULD NOT CONTAIN RESERVATIONS PROVIDED IN SECTION 3184, GENERAL CODE.

*SYLLABUS:*

*Deeds of lands made in pursuance of the provisions of Amended Senate Bill No. 95, of the 88th General Assembly, should not contain reservations of timber and mineral resources on said lands, or of fishing and fowling privileges on the lands.*

COLUMBUS, OHIO, July 5, 1929.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Amended Senate Bill No. 95, which will become a law July 2nd, 1929, makes provision for the sale of the ministerial lands of Green Township, Hocking County, Ohio.

Should deeds for said lands contain a reservation of the timber and mineral as provided in Sec. 3184, G. C.?”

When, in 1792, the Congress of the United States granted to the Ohio Company what is known as the Ohio Company's First Purchase, consisting of land lying along

the northwesterly bank of the Ohio river, within what is now Washington, Athens, Meigs, Gallia and Lawrence counties, it reserved Sections 16 and 29 of each of the original surveyed townships, except two townships set aside for the Ohio University, and by Act of Congress, the use of the land in said Sections 16 and 29 was given to the Northwest Territory in trust, for school purposes and "for purposes of religion," respectively. This same reservation and grant to the Northwest Territory was made of Sections 16 and 29, in each of the original surveyed townships comprised within the grant of lands between the Miami rivers, made by Congress in 1794, to John Cleves Symmes. This grant lies within what is now Hamilton, Butler and Warren Counties, and is commonly referred to as the Symmes Tract or Miami Purchase.

When the Ohio Company secured its grant of land commonly called the Ohio Company's Second Purchase, consisting of ten original townships within the territory now embodied in Morgan, Athens, Hocking and Vinton Counties, no such reservation was made by Congress as in the former grant, but the trustees of the Ohio Company, by resolution of January 24, 1794, ceded to the Northwest Territory Sections 16 and 29 of each of the original surveyed townships within its second purchase, for school purposes and for purposes of religion, respectively.

The Legislature of the Northwest Territory was designated as trustee of the said Sections 16 and 29 in the Ohio Company's First Purchase, and in the Symmes Tract by the ordinances, compacts and acts of Congress providing for the sale of these two tracts of land, and that body was also authorized to act as trustee for the said Sections 16 and 29 in the Ohio Company's Second Purchase, by resolution of the trustees passed January 7, 1792.

Because of the purpose for which these lands were reserved, and set aside, they have become known as school and ministerial lands, respectively.

When the State of Ohio was carved from the Northwest Territory and admitted as a separate state, it became trustee of these school and ministerial lands for the purposes for which they had been granted. Later, by statute, the Auditor of State, by virtue of his office, became supervisor of these lands.

The control and management of these lands became the subject of much and varied legislation. During the early history of Ohio some change was made in the law with reference to the management of some part of these lands at nearly every session of the Legislature. For a number of years, these lands were leased for terms varying from seven to ninety-nine years, renewable forever, for an annual rental of six percent upon their appraised value under provisions of both general and special acts of the Legislature. Many special acts were passed, authorizing and fixing the manner of leasing some section or part of a section of these lands.

Inasmuch as many abuses arose in the management of these lands, it was thought advisable to sell them, and many acts of the Legislature have been passed from time to time, both general and special, authorizing the sale of any of these lands or of some particular section or part of a section.

The present general law with reference to the management, leasing and sale of school and ministerial lands, and the surrender of permanent leasehold interests therein is found in Sections 3181 to 3243, General Code, inclusive. The present general law relating to the sale of these lands and the surrender of permanent leasehold interests therein was enacted in 1917 (107 O. L. 366) and has not since been materially changed. In Section 4 of said Act, later codified as Section 3184, General Code, the general policy of the State with reference to the conservation of natural resources on said lands is set forth.

Said Section 3184, General Code, reads as follows:

"It is declared to be the policy of the state to conserve the timber and mineral resources of the trust, and to this end the state reserves all timber,

and all gas, oil, coal, iron and other minerals that may be upon or under the said school and ministerial lands, subject to such uses as may be by law provided, also reserving for the citizens of the state the use of all streams flowing through or abutting upon such lands for fishing and fowling, and so much of the bank thereof as may be necessary for such enjoyment and the protection of such stream from erosion, contamination or deposit of sediment."

In Section 36 of said act codified as Section 3203-13, General Code, it was provided that in each conveyance of the fee simple title, upon the sale of any school and ministerial lands, reservation should be made of all oil, gas, coal and other minerals and, where the land abuts upon a flowing stream or such a stream flows through such land, the enjoyment of such stream for fishing and fowling, and the right of ingress and egress over such land to and from such stream, when the same is or may become necessary for such enjoyment, should be reserved.

Amended Senate Bill No. 95 to which you refer, in your inquiry is an act entitled :

"To authorize the surrender of leases for ministerial lands in Section 29 of Township 13, Range 16 of the Ohio Company's Purchase and the purchase of the same in fee simple."

This act is in the nature of a special act providing a method by which any lessee, sub-lessee or owner in any way of a leasehold interest in Section 29 of original township 13 of range 16, in the Ohio Company's Purchase, being in Green Township, Hocking County, Ohio, may surrender said lease, sub-lease or evidence of his ownership or holding to the auditor of the county and receive a deed in fee simple to said lands by paying to the county treasurer of the county one and one-half times the full amount of the value of such lands, as fixed at the time of the last appraisalment prior to the taking effect of the act. The act becomes effective July 2, 1929. The act does not provide that when a lease is surrendered and a deed in fee simple given for the lands covered by the surrendered lease, the reservation shall be made in said deed of coal, oil, gas or other natural resources.

In 1921 the Legislature of Ohio passed an act (109 O. L. 67) entitled "An act to authorize the surrender of leases for school lands in Section 16, Township 7, Range 13, Ohio Company's purchase and the purchase of the same in fee simple."

The act of 1921 above referred to, although by its title it relates only to school lands, provided, as shown by its text, for the surrender of leasehold interests in both Sections 16 and 29 of original Township 7, of Range 13 in the Ohio Company's purchase, being in Homer Township, Morgan County, Ohio, and the procuring by the lessee of a deed in fee simple for said lands by paying to the county treasurer the full amount of the value of such lands as appraised prior to March 9, 1904.

The text of amended Senate Bill No. 95, of the 88th General Assembly, is almost precisely the same as is that of the act of 1921 above referred to, with the exception that the act of 1921 relates to both school and ministerial lands, and provides that the lessee of such lands in the township therein described may surrender his lease and acquire a fee simple title to said lands by paying the full value of the lands as appraised prior to March 9, 1904, whereas Amended Senate Bill No. 95 of the 88th General Assembly, which relates only to ministerial lands, provides that the lessees of such lands in the township described therein may surrender their leases and acquire a fee simple title to the lands by paying one and one-half times the appraised value of said lands, as shown by the last appraisalment prior to taking effect of the act. In fact, upon comparing the two acts, it is apparent that the person who drew Amended Senate Bill No. 95, supra, had before him the act of 1921, and copied the phraseology

of the former act in drawing the latter. The only changes therein made were those noted above. Neither act makes any provision for the reservation of coal, oil, gas or other minerals, or fishing and fowling privileges on said lands.

After the enactment of the act of 1921, above referred to, the then Attorney General was asked his opinion as to whether or not reservations in conveyances of lands under the provisions of this act should be made, as provided by Section 3203-13, General Code. In reply thereto, the Attorney General, as stated in the syllabus of his opinion which is reported in the Opinions of the Attorney General for 1921, at page 662, said :

“The provisions of Section 3203-13, G. C., have no application to deeds executed under authority of Amended Senate Bill No. 75, 109 O. L. 67, authorizing the surrender of leases for school lands in Homer Township, Morgan County, Ohio, and the purchase of the same in fee simple.”

I am not at all convinced that the reasoning of this opinion is sound; that is, it may very well be argued that the language of the special act may be harmonized with the provisions of general law establishing a definite policy to be applied in every conveyance of fee simple title of school and ministerial lands, so that any conveyance of fee simple title in the present case might be made with the reservations hereinbefore enumerated. However that may be, the act here in question, and the one under consideration by the previous Attorney General are indistinguishable. As has been heretofore stated, the present act was apparently drawn by using the language of the earlier one, and it is reasonable to presume that the earlier act was used in the light of the fact that it has received the interpretation placed upon it by the former Attorney General. In view thereof, I feel that a similar construction should be placed upon the present act. I am the more persuaded toward this conclusion by reason of the fact that in the event that the terms of the act should be held not to warrant a conveyance without reservation, any action on the part of state administrative officers taken without making such reservations would be ineffective to convey that which should have been reserved.

Accordingly, in accordance with the doctrine established by the 1921 opinion of the Attorney General, I am of the opinion that deeds of lands made in pursuance of the provisions of Amended Senate Bill No. 95 of the 88th General Assembly should not contain reservations of timber and mineral resources on said lands or of fishing and fowling privileges on the lands.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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600.

SOLDIER—HONORABLY DISCHARGED FROM REGULAR ARMY—ADMITTANCE TO SOLDIERS' AND SAILORS' HOME AUTHORIZED.

SYLLABUS:

*Where one has served in the regular army of the United States for a period of three years, during which time he devoted full time to his duties under the supervision and direction of superior regular army officers, has been honorably discharged and*