

3833.

## APPROVAL, BONDS OF CAESARCREEK TOWNSHIP RURAL SCHOOL DISTRICT, GREENE COUNTY, OHIO, \$1,425.17.

COLUMBUS, OHIO, January 17, 1935.

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

3834.

## APPROVAL, LEASE TO LAND IN PLEASANT TOWNSHIP, BROWN COUNTY, FOR STATE GAME AND BIRD REFUGE—WAYNE CAHALL.

COLUMBUS, OHIO, January 17, 1935.

HON. WILLIAM H. REINHART, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease No. 2264, executed by one Wayne Cahall of Pleasant Township, Brown County, Ohio, to the state of Ohio, on a parcel of land in said township and county, as described in said lease, containing 497 acres of land. By this lease, which is one for a term of five years, this land is leased and demised to the state solely for state game refuge purposes; and it is noted in this connection that acting under the provisions of Section 1435-1 and other related sections of the General Code, the Conservation Council, acting through you as Conservation Commissioner, has set this property aside as a state game and bird refuge during the term of said lease.

Upon examination of this lease, I find that the same has been properly executed and acknowledged by said lessor and by the Conservation Council acting on behalf of the state through you as Commissioner.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

3835.

## APPROVAL, ABSTRACTS OF TITLE TO LAND IN ANDOVER TOWNSHIP, ASHTABULA COUNTY, OHIO—PYMATUNING LAND COMPANY.

COLUMBUS, OHIO, January 18, 1935.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—Among the abstracts of title of the several tracts of land which were recently acquired by the state of Ohio from the Pymatuning Land Company for reservoir and public park purposes, all of which abstracts of title were examined by me prior to the delivery of the deed by which these tracts of land were conveyed to the State, are abstracts covering the following designated tracts or parcels of land which, by proper descriptions by metes and bounds, are included in said deed:

1. A tract of 245.13 acres of land situated in the Township of Andover, Ashtabula County, Ohio, known as being a part of Lot No. 43 of the Original Survey of said Township, and being the same tract of land conveyed by the Realty Guarantee and Trust Company to the Pymatuning Land Company by warranty deed under date of December 30, 1921 and recorded in deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

2. A tract of 39.75 acres of land in Andover Township, Ashtabula County, Ohio, known as being the North part of the West half of Lot 44, according to the Original Survey of said township, and being the same tract of land described as Parcel XXIV in the warranty deed in and by which this tract of land was conveyed by the Realty Guarantee and Trust Company to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

3. A tract of 103.21 acres of land in Andover Township, Ashtabula County, Ohio, known as being a part of Lot 45, according to the Original Survey of said township and being Parcel XIX in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed this tract of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

4. A tract of 50.61 acres of land in Richmond Township, Ashland County, Ohio, known as being part of Lots Nos. 79 and 80, according to the Original Survey of said Township, and being Parcel No. XXXII in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed this tract of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

5. Tracts of 35 acres, 43 acres and 10 acres, respectively, situated in the Townships of Andover and Richmond, Ashtabula County, Ohio, and being parts of Lot 41 of the Original Survey of Andover Township and of Lot 80 according to the Original Survey of Richmond Township and being respectively sub-parcels 1, 2 and 3 of Parcel XXXIII in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed these tracts of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

6. A tract of 91.5 acres of land situated in Richmond Township, Ashtabula County, Ohio, known as being part of Lot No. 80, according to the Original Survey of said Township and being Parcel No. XXXVI in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed this tract of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

7. Tracts of 19 acres and 9 acres, respectively, in Andover Township, Ashtabula County, Ohio, situated in the Northeast part of Lot No. 43 according to the Original Survey of lands in said Township and being sub-parcels 1 and 2, respectively, of Parcel XXVII in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed these tracts of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

8. A tract of 104 acres of land in Andover Township, Ashtabula County, Ohio, known as being part of Lot No. 42 according to the Original Survey of

said township, and being Parcel No. XXVIII in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed this tract to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

9. A tract of land situated in Andover Township, Ashtabula County, Ohio, known as being part of Lot No. 42 according to the Original Survey of said township and being Parcel No. XXIX in the warranty deed at and by which the Realty Guarantee and Trust Company conveyed this tract of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

10. A tract of 130.46 acres of land in Andover Township, Ashtabula County, Ohio, known as being part of the West half of Lot No. 42 according to the Original Survey of said township and being Parcel No. XXX in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed this tract of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

11. A tract of 66 acres of land in Andover Township, Ashtabula County, Ohio, known as being part of Lot No. 41 according to the Original Survey of said township, and being Parcel No. XXXI in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed this tract of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

12. A tract of 304 acres of land in Andover Township, Ashtabula County, Ohio, known as being parts of lots Nos. 41 and 42 according to the Original Survey of said Township and being Parcel No. XXXVIII in the warranty deed in and by which the Realty Guarantee and Trust Company conveyed this tract of land to the Pymatuning Land Company under date of December 30, 1921, deed book 263, page 421, Recorder's Office, Ashtabula County, Ohio.

Upon examination of the abstracts of title covering the several tracts of land above designated I found that the Pymatuning Land Company had a good merchantable fee simple title in and to said lands subject only to the lien of the taxes for the year 1934 on these lands and the several tracts thereof.

With respect to several of these tracts of land as in the case of a number of the tracts of land the respective titles to which were the subject of opinions directed to you by me prior to the acquisition of this property by the state of Ohio, former owners in the chain of title to these properties, conceiving that there might be oil or gas in these lands, made a reservation thereof in deeds in and by which the title to the lands were conveyed to subsequent owners in the chain of title. All told, there were only a few of these tracts of land that were subject to these reservations and it was thought by you and by the representatives of the Pymatuning Land Company that these reservations affecting only a few of the tracts of land were of minor consequence.

As was suggested by me in former opinions relating to the title to the other several tracts of land acquired by the State from the Pymatuning Land Company, an application should be made to the Tax Commission for the exemption of this property from taxation, under the sections of the General Code relating generally to the exemption from taxation of real property under the constitutional laws of this state.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

3836.

DEED—ACT OF CONGRESS IMPOSING STAMP TAX ON DEEDS DOES NOT  
APPLY TO DEEDS EXECUTED TO OR BY STATE.

SYLLABUS:

*Section 725 of the Act of Congress, approved June 6, 1932, as amended by the Act of Congress, approved June 16, 1933, providing for a stamp tax upon deeds and other instruments for the conveyance of lands, tenements or other real property, does not apply to deeds executed to or by the State.*

COLUMBUS, OHIO, January 18, 1935.

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

DEAR SIR:—This is to acknowledge the receipt of your recent communication in which you request my opinion as to whether or not two certain deeds, recently executed by the State of Ohio, conveying to the Chesapeake & Ohio Railway Company certain parcels of abandoned Hocking Canal lands in Falls Township, Hocking County, Ohio, were required to have affixed thereon the stamps provided for by Section 725 of the Act of Congress, approved June 6, 1932, as amended by the Act of Congress, approved June 16, 1933.

This section, as so amended, provides that a deed instrument or other writing, delivered on or before July 1, 1935, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in, the purchaser or purchasers or any other person or persons, by his, her or their direction, when the consideration or value of the interest of the property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500.00, shall carry a stamp tax of 50c and for each additional \$500 or fractional part thereof, 50c.

The provisions of this section do not in terms exclude from the operation of the law, deeds executed by or to the State. As to this it is to be noted, however, that neither the Internal Revenue Department of the Federal Government nor any other department thereof has at any time sought to enforce the provisions of this section with respect to deeds by which real property is conveyed by or to a State. This has been by reason of the recognition on the part of federal officials, charged with the duties of administering the provisions of this law, that the execution of deeds by or to a State is the means by which such State exercises its functions in disposing of or in acquiring lands or other real property; and that, in this view, such deeds are instrumentalities of the State in carrying out these purposes. Being instrumentalities of the State, in the exercise of its functions in acquiring or disposing of property, these instruments are considered to be immune from Federal taxation on the familiar principles discussed and applied in the case of *Indian Motor Cycle Company vs. United States*, 283 U. S. 570, and in many other Federal and State cases which might be cited on this point.

I am of the opinion, therefore, by way of specific answer to your question, that no Federal stamps were required on these deeds.

It is, perhaps, pertinent to note further in this connection that for the reasons stated in the case of *Cole vs. Ralph*, 252 U. S. 286, 64 L. ed. 567, the absence of Internal Revenue stamps required on deeds by the Act above referred to, neither invalidates such deeds nor the title of the lands or other property thereby conveyed.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*