

trial Commission under date of September 5, 1935, being Opinion No. 4616.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, CORRECTED FOR LANDS ACQUIRED FOR PUBLIC PARK AND RESERVOIR PURPOSES FROM WILLIAM F. AND FLORA E. PENCE, JOHNSON TOWNSHIP, CHAMPAIGN COUNTY, OHIO.

COLUMBUS, OHIO, April 10, 1937.

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

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a short form abstract and a warranty deed relating to a small parcel of land which is owned of record by William F. Pence and Flora E. Pence as a part of a larger tract of eighty-one acres in Johnson Township, Champaign County, Ohio, which parcel is a part of the south half of the southwest quarter of Section 22, town 3, range 12 north, and which is more particularly described as follows:

Beginning at a point in a common property corner between the grantor, Hallet L. Hunt and John E. and Ella Frank, said point being in the northeast corner of the south-half of the southwest quarter of Section 22, Town 3, Range 12 North, Johnson Township, Champaign County, Ohio; thence running S. 0 deg. 53' E. along the property line between the grantor and Hallet L. Hunt, said line being the half section line of Section 22, a distance of 195 feet to a point in a concrete monument; thence N. 56 deg. 47' W. a distance of 349.47 feet to a point in a concrete monument in the property line between the grantor and John E. and Ella Frank; thence N. 89 deg. 58' E. along said property line a distance of 310 feet to the place of beginning, and containing 0.69 acres, more or less.

Upon examination of the abstract of title of and relating to this small parcel of land which is being conveyed by said William F. Pence and Flora E. Pence to the State of Ohio as a gift in connection with the Kiser Lake Project and which conveyance has been accepted as a gift for said purpose by the Conservation Council, acting under the authority conferred upon it by Section 472, General Code, I find that said William F. Pence and Flora E. Pence, as tenants in common, have a good and indefeasible fee simple title to this parcel of land. I further find, upon examination of this abstract of title, that they own and hold this property free and clear of all liens and encumbrances except the taxes on the property for the last half of the year 1936 which are due and payable June 20, 1937, and which are assessed on the whole of the 81-acre tract of land of which this parcel is a part.

In this connection, it is noted that under date of May 27, 1936, William F. Pence executed an instrument in deed form in and by which he granted an easement for right of way purposes to the Farm Bureau Rural Electrification Cooperative, Inc. The right of way thus granted was apparently one for the creation of poles, wires and other appliances through and along the lands of said grantor along a route described in said instrument as follows:

“Along the East side and West and North side of Route 69 and County 61--63 rods now or hereinafter located within 10 feet of highway limits or not more than 10 feet from highway limits.”

It does not clearly appear how this easement granted to said corporation for highway purposes, and which was later assigned and transferred to the Pioneer Rural Electric Cooperative, Inc., has affected or will affect the small parcel of land here in question or the use which your department may desire to make of the same as a part of the Kiser Lake Project. From the location of this parcel of land, I am inclined to the view that it is not affected by this easement or by any electric light or power lines that may be erected pursuant to the same. This, however, is a question of fact to be determined by you or by your authorized engineers or other agents in charge of this project.

Upon examination of the warranty deed tendered to the state by William F. Pence and Flora E. Pence, I find that said deed has been properly executed and acknowledged by said grantors and that the form of this deed is such that the same is legally sufficient to convey the above described parcel of land to the state by fee simple title free and clear of the dower interest heretofore held by each of these grantors in the undivided estate of the other in this parcel of land,

with a covenant of warranty that said premises are conveyed to the state free and clear of all encumbrances whatsoever, subject, however, to the reservation contained in said deed that the grantors shall have the right to cut all timber on this parcel of land that has a butt diameter greater than 12 inches measured two feet above the ground level, and that the grantor is to remove such timber on or before June 30, 1937. This deed contains the further provision that the state is to erect a farm fence between the parcel of land conveyed to the state by this instrument and the remaining lands of said grantors.

I am accordingly approving the title of William F. Pence and Flora E. Pence in and to the above described parcel of land and, likewise, the warranty deed in and by which this property is conveyed to the State of Ohio, and inasmuch as Section 472, General Code, which authorizes the Conservation Council to acquire lands for public park and reservoir purposes, provides that the acquisition of such lands, whether such acquisition is by gift, purchase or otherwise, is subject to the approval of the Attorney General, I take this means of expressing my approval of the acquisition of this property by the Conservation Council for and in the name of the State of Ohio as is further evidenced by my approval endorsed upon said deed.

Inasmuch, as is above noted, as this property is conveyed to the State of Ohio as a gift, no contract encumbrance record or Controlling Board certificate was or is necessary.

I am herewith returning to you the abstract of title and warranty deed above referred to and likewise the copy of the minutes of the Conservation Council showing the acceptance by the Conservation Council of this conveyance as a gift of the property by the grantors above named.

After this warranty deed has been presented to the County Auditor of Champaign County for transfer of the parcel of land therein described, in the manner provided by law, and the deed has been recorded in the office of the County Recorder of said county, the deed, together with the abstract of title and the copy of the minutes of the Conservation Council, should be lodged with the Auditor of State and be kept by him in the same manner as the muniments of title of other property owned and held by the state are kept.

Respectfully,

HERBERT S. DUFFY,

Attorney General.