

2318.

SCHOOL LANDS—SECTION 3203-13 G. C. (RELATIVE TO RESERVATIONS OF ALL OIL, GAS, COAL AND OTHER MINERALS IN CONVEYANCES OF FEE SIMPLE TITLE) NOT APPLICABLE TO AMENDED SENATE BILL NO. 75 (109 O. L. 67).

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.

COLUMBUS, OHIO, August 12, 1921.

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

DEAR SIR:—Acknowledgment is made of your letter of July 29th, reading to this effect:

“Should reservations in conveyance of fee simple as provided by section 3203-13 G. C. be made in the conveyance of lands under the provisions of ‘An act to authorize the surrender of leases for school lands in Sec. 16 of township 7, range 13, Ohio company’s purchase, and the purchase of same in fee simple,’ passed March 24, 1921?”

The act you refer to—Am. S. B. No. 75, 109 O. L. 67—was filed in the office of the secretary of state, April 11, 1921, and became effective ninety days thereafter, to-wit on July 11, 1921. It is entitled “An act to authorize the surrender of leases for school lands in section 16, of township 7, range 13, Ohio company’s purchase, and the purchase of the same in fee simple,” and reads as follows:

“Section 1. That any lessee, sub-lessee or owner in any way of a leasehold interest in 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 which is held mediately or immediately under or by virtue of a lease made by special trustees of said original township, may surrender to the auditor of said county his lease, sub-lease or evidence of his ownership or holding, and pay to the county treasurer of said county the full amount of the value of such lands, as appraised prior to March 9, 1904, the lease of which is so surrendered; if other than an original lease is surrendered, then the amount to be paid is such part of the appraised value, as appraised prior to March 9, 1904, of the whole lease given as the number of acres so surrendered is proportionate to the whole number of acres included in the original lease. The county treasurer shall thereupon give such person a certificate duly made and signed, showing the name of the person making such surrender, a description of the premises surrendered, the amount paid into the treasury, and stating that said amount was the full appraised value thereof prior to March 9, 1904; and which certificate when countersigned by the auditor and sealed with the seal of his office, the owner thereof may present to the auditor of state, and said auditor shall then prepare a deed in due form, granting to such owner of certificate a fee simple title to said lands so surrendered, and which said deed shall be executed by being

signed by the governor, and countersigned by the auditor of state and sealed with the seal of the state of Ohio; and when so executed said deed shall be by said state auditor transmitted to said county auditor, and by the latter delivered to the grantee thereof.

Section 2. Said county auditor shall report any sales made by virtue of this enactment to the auditor of state and from the time of making such report the state shall pay interest on such sum or sums so reported and the treasurer of state upon receipt from the auditor of state of a certificate showing such payment to have been made into the county treasury, and the execution and transmission of said deed shall draw out of said county treasury said money so paid to said treasurer and accredit the same to the proper fund."

Section 3203-13 G. C., to which you refer, reads as follows (See H. B. 11, 109 O. L. 41):

"Each conveyance of the fee simple title, except when such school or ministerial lands are located within the corporate limits of a city, shall contain reservations 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 egress and ingress over such land to and from such stream when the same is or may become necessary for such enjoyment and to all rights and easements granted or hereafter granted under the provisions of law providing for the leasing of such lands for gas, oil, coal, iron and other minerals."

Said section was known as section 36 of the so-called Garver law, passed March 20, 1917, being H. B. 192, 107 O. L. 357. Said act was entitled:

"An act to provide for the better administration of the school and ministerial land held in trust by the state of Ohio, to codify the laws relating thereto, to safeguard both the trust and the rights of the citizens of Ohio holding leasehold or fee simple titles in or to said lands, and make more certain the rights and obligations of the state and the lessees of such lands."

Said section 36 of the Garver law (now section 3203-13 G. C.) appears under the heading of "Sales." Section 39 (section 3203-16 G. C.), also appearing under the heading just mentioned, provides for the sale of school and ministerial lands to the highest bidder, the auditor of state, as state supervisor, being by that section directed to prepare a deed "conveying said lands in fee simple to such successful bidder."

Section 4 of the Garver law (now section 3184 G. C.) makes a broad declaration of policy respecting the timber and mineral resources of the school and ministerial lands, said section providing:

"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."

Section 30 of said law (now section 3203-7 G. C.) applying to leases, says:

"In each lease there shall be a special reservation to the state of all oil, gas, coal and other minerals * * *."

It will be observed that Am. S. B. No. 75 is entirely silent upon the subject of reservations. The act provides that the lessee may

"pay to the county treasurer of said county the full amount of the value of such lands, as appraised prior to March 9, 1904."

There is no showing that the appraisal referred to, did not, in arriving at the value of such lands, include everything under, in, and upon the same. This being true, it could hardly have been the intention of the legislature to cause the lessee to pay to the county treasurer "the full amount of the value of such lands," and then to give him a deed which would so operate as to deny him the right to exert full ownership and control over those lands.

It is also significant that, although the Garver act provides a method whereby lessees of school and ministerial lands may apply for, and receive, fee simple titles, the legislature, by enacting Am. S. B. No. 75, provided a special method to authorize the surrender of leases for school lands in Homer township, Morgan county. The latter act is a special act, and contains no evidence of any legislative intention that the provisions of the Garver act—the general—should be read into and made a part of it.

Hence, it is believed that the provisions of section 36 of the Garver act (Sec. 3203-13 G. C.) have no application to deeds executed under authority of Am. S. B. No. 75, 109 O. L. 67.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2319.

CIGARETTES—COPY OF LAW REGULATING SALE MUST BE POSTED IN CONSPICUOUS PLACE—FINES COLLECTED IN PROSECUTIONS UNDER SAID SECTION 12680-1 G. C. (109 O. L. 223)—HOW DISTRIBUTED.

Fines collected in prosecutions had under supplemental section 12680-1 G. C. (Senate Bill No. 219, 109 O. L. 223) are to be distributed according to the provisions of sections 5900, 5901 and 12683 G. C.

COLUMBUS, OHIO, August 12, 1921.

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

DEAR SIR:—Your letter requesting an opinion reads thus:

"On May 16, 1921, a supplemental section (12680-1 enacted by the general assembly), was filed with the secretary of state.

I desire an opinion from your department as follows: