

amending Section 4 of Article XV; by amending Section 2 of Article II; and by amending Sections 1 and 2 of Article XVII.
JOHN W. BRICKER, Attorney General."

Respectfully,

JOHN W. BRICKER,
Attorney General.

5804.

APPROVAL — CONDITIONALLY, GUARANTEED CERTIFICATES OF TITLE, ETC., TO LAND IN GREEN TOWNSHIP, SUMMIT COUNTY, OHIO—KELLY MYERS.

COLUMBUS, OHIO, July 3, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval certain guaranteed certificates of title, two in number, a warranty deed and contract encumbrance record No. 3, all of which relate to the proposed purchase by the state of Ohio for the use of your department in the construction of the Nimisila Creek Basis Reservoir improvement, of a tract of land in Green Township, Summit County, Ohio, which is now owned of record by one Kelly Myers. This tract of land is situated in part in the east half of the northwest quarter of Section 30 in said township and in part in the southwest quarter of Section 19 in said township, and is more particularly described by metes and bounds as follows:

Beginning at the southeast corner of the northwest quarter of Section No. 30; thence N. 4° 00' 30" W. along the center line of the existing Nerhood Road, six hundred and no hundredths (600.00) feet to a stake; thence N. 15° 24' 10" E. one hundred twenty six and ten hundredths (126.10) feet to a stake; thence N. 51° 15' 43" E. one hundred forty two and no hundredths (142.00) feet to a stake in the center line of Nerhood Road and on the east line of the northwest quarter of Section No. 30; thence along the said east line and the center line of Nerhood Road, N. 7° 12' 23" E. eleven hundred twenty nine and seventy eight hundredths (1129.78) feet to a stake on the southeast corner of Cletus Hartong's nine acre lot; thence along the south line of Hartong's lot N. 82° 47' 37" W. three hundred eighty one and thirty eight hundredths (381.38) feet to a stake on the

southwest corner of Hartong's lot; thence along Hartong's west line N. 7° 12' 23" E. nine hundred eighty nine and no hundredths (989.00) feet to a point in the center line of the Clinton-Greensburg Road; thence along the center line of the Clinton-Greensburg Road, S. 85° 44' 40" W. nine hundred ninety nine and fifty two hundredths (999.52) feet to a point; thence S. 7° 26' 00" W. twenty seven hundred forty one and eighteen hundredths (2741.18) feet to a point in the center line of Killinger Road; thence along the center line of Killinger Road S. 83° 01' 30" E. thirteen hundred seventy one and eighty one hundredths (1371.81) feet to the place of beginning and containing eighty and no hundred (80.00) acres of land, as surveyed May 6th, 1936 by Francis Stafford.

On examination of the certificates of title submitted, one of which relates to that part of the above described tract of land which is located in the northwest quarter of Section 30 and the other of which relates to that part of this tract of land which is located in the southwest quarter of Section 19 of Green Township, I find that of the date of these certificates of title, to wit, April 28, 1936, Kelly Myers had a good and indefeasible fee simple title to the above described tract of land and that he owned and held the same free and clear of all encumbrances save and except those hereinafter mentioned which are here noted as exceptions to the title in and by which Kelly Myers owns and holds this property.

1. On August 16, 1902, one Elias Myers, the father of Kelly Myers and his predecessor in title in and to the above described property, executed an easement deed to The East Ohio Gas Company in and by which he granted to said company a right of way by way of easement for two pipe lines to be laid down and constructed for the transportation of gas, together with the additional right to erect, maintain and operate a telegraph line along the public road adjacent to this property. The easement granted to the gas company by this deed apparently relates to all of the above described tract of land and the easement thus granted and the pipe lines, if any, laid down and constructed by the gas company in and upon this property are an encumbrance upon the same.

2. On October 19, 1907, Elias Myers, the predecessor in title of Kelly Myers, executed another easement deed to The East Ohio Gas Company in and by which he granted to this company a right of way for a pipe line for the transportation of gas in and over the above described tract of land. The easement thus granted and the pipe line, if any, laid down and constructed by the gas company pursuant to this easement, are an encumbrance upon the property.

3. On February 9, 1932, Kelly Myers, then as now the owner of this property, executed to The East Ohio Gas Company an oil and gas

lease which is recorded in Vol. 1407, page 309 of the Lease Records of Summit County, Ohio. By this lease, which was likewise signed by Lena Myers, his wife, Kelly Myers gave and demised to the gas company the right to enter in and upon the above described tract of land for the purpose of developing oil and gas or the constituents of either of these products and for the purpose of laying pipe lines, tanks and other structures for the purpose of storing and transporting oil or gas developed in and upon this property. This lease is for a term of five years from July 22, 1932, and for so much longer as oil or gas is found on this property in paying quantities. This lease is, of course, an encumbrance on this property and upon the title in and by which Kelly Myers owns and holds the same.

I am not advised by these certificates of title as to what, if any, pipe lines for the transportation of oil or gas were constructed in and upon this property and by the gas company pursuant to the easements granted to it for this purpose by the deeds of Elias Myers, as above noted. However, it appears from the warranty deed which Kelly Myers has tendered to the state that in the granting clause of the deed there is an exception with respect to "certain rights of way heretofore granted to The East Ohio Gas Company." How far these easements now owned and held by The East Ohio Gas Company or any pipe lines constructed in and upon these lands pursuant to the easements thus granted to it, will interfere or otherwise affect the use which your department desires to make of these lands in connection with the improvement above referred to, is a matter to be determined by you and by the engineers of the federal government who have charge of this improvement. Likewise, in this connection, it may be observed that there is nothing in these certificates of title to indicate what, if any, operations have been carried on by The East Ohio Gas Company for the development of oil and gas on this property under the oil and gas lease executed to it by Kelly Myers for this purpose. You and the engineers in charge should likewise be in a position to determine just how far the encumbrance of this lease will affect the use of the above described property in the construction of this improvement, and the procedure to be taken for the cancellation of this lease if the same is found to be necessary.

4. It appears from these certificates of title that on July 18, 1930, The Central Depositors Bank and Trust Company obtained the judgment by the consideration of the Court of Common Pleas of Summit County in Case No. 8397 on the dockets of said court, against the firm of Barico and Myers (K. M. Myers; Frank Barico). This judgment is for the sum of \$500.00, with interest thereon at 6% from March 8, 1930, and for the costs in the case. Assuming, as I do for the purpose of this opinion, that K. M. Myers, referred to as one of the judg-

ment debtors, is one and the same person as Kelly Myers, the owner and holder of the above described property, it is clear that this judgment upon the issue of execution thereon, became a lien on the above described property, and that inasmuch as such execution was issued and returned unsatisfied on July 5, 1935, this judgment, together with interest thereon, and the costs of the case are now a valid and subsisting lien upon this property. Before the transaction for the purchase of the above described property is closed by your department by the issuance of voucher and warrant to cover the purchase price of the property, you should see to it that this judgment is satisfied and discharged and is released upon the docket of case above noted.

5. It appears from the certificates of title submitted to me that the taxes for the year 1935 on the above described property are unpaid and are a lien upon the property. The undetermined taxes for the year 1936 are likewise a lien upon this property. The respective amounts of the taxes for the years 1935 and 1936 are not stated in the certificates of title but the same are, of course, a lien upon the property to the full amount thereof. Needless to say, some arrangements should be made by and between your department and the owner of this property with respect to the payment of these taxes at the time the deal is closed for the purchase of the property.

Upon examination of the warranty deed tendered by Kelly Myers, I find that the same has been properly executed and acknowledged by him and by his wife, Lena Myers. And that the form of this deed is such that the same is legally sufficient to convey this property to the state of Ohio by full fee simple title, subject only to the exception above noted with respect to certain rights of way for pipe line purposes theretofore granted to The East Ohio Gas Company, and free and clear of the inchoate dower interest of Lena Myers who, by signing the deed, released her dower interest in the property. This deed contains a covenant that the property is free from all encumbrances whatsoever. I assume, however, that as to this, the covenant is to be read in connection with the exception contained in the granting clause with respect to pipe line rights of way theretofore granted in and upon this property. This deed is approved.

As a part of the files relating to the purchase of the property, you have submitted to me contract encumbrance record No. 3. This contract encumbrance record has been properly executed and the same shows that there is a sufficient unencumbered balance in the appropriation account to the credit of your department for the purchase of lands in the Nimisila Creek Basin for the construction of the reservoir above referred to and for the purchase of the above described tract of land for this purpose, which purchase price is the sum of \$15,200.00.

Subject only to the exceptions above noted, as to the title in and by

which Kelly Myers owns and holds the above described property, his title to this property is approved and I am herewith returning to you for further proceedings relating to the purchase of this property, the certificates of title above referred to and the warranty deed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5805.

APPROVAL—CERTIFICATE OF TITLE TO LAND IN GREEN
TOWNSHIP, SUMMIT COUNTY, OHIO—NORTHERN OHIO
GUARANTEE TITLE COMPANY OF AKRON, OHIO.

COLUMBUS, OHIO, July 6, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certificate of title guaranteed by The Northern Ohio Guarantee Title Company of Akron, Ohio, a warranty deed and contract encumbrance record No. 3, all of which relate to the proposed purchase by the state of Ohio for the use of your department in the construction of the Nimisila Creek Basin Reservoir improvement, of a tract of land which is owned of record by one Kelly Myers in Green Township, Summit County, Ohio. This tract of land is a part of the southwest quarter of Section 30 in said township and is more particularly described by metes and bounds as follows:

Beginning at an iron pipe set in a tile on the south line of Section No. 30 S. 82° 45' 50" E. thirteen hundred sixty-three and sixty-two hundredths (1363.62) feet from the southwest corner of Section No. 30; thence S. 82° 45' 50" E. two hundred sixty-seven and ninety-six hundredths (267.96) feet to a stake; thence along the old tail race from the Comet Mill N. 61° 42' 30" E. five hundred fifty-seven and four hundredths (557.04) feet to a stake; thence N. 71° 55' 00" E. ninety-nine and no hundredths (99.00) feet to a stake; thence S. 80° 50' 00" E. seventy-one and ninety-four hundredths (71.94) feet to a stake; thence leaving the old tail race N. 6° 55' 00" E. eight hundred sixty-seven and ninety hundredths (867.90) feet to a post; thence N. 83° 08' 00" W. four hundred ninety and thirty-eight hundredths (490.38) feet to a post; thence along the west bank of a stream