

3161.

APPROVAL—BONDS, MT. PLEASANT RURAL SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO, \$25,000.00, DATED OCTOBER 1, 1938.

COLUMBUS, OHIO, October 28, 1938.

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

RE: Bonds of Mt. Pleasant Rural School Dist.,  
Jefferson County, Ohio, \$25,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of building bonds dated October 1, 1938, bearing interest at the rate of 3% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY  
*Attorney General.*

3162.

STATUS—ABSTRACT OF TITLE AND OTHER INSTRUMENTS, PROPOSED PURCHASE BY STATE OF OHIO, THROUGH CONSERVATION COMMISSIONER, PARCEL OF LAND, GRANTOR, ARTHUR G. SMITH, DESCRIBED PROPERTY, PART OF SOUTH BASS ISLAND, PUT-IN-BAY TOWNSHIP, OTTAWA COUNTY, OHIO, FOR CERTAIN HOUSING FACILITIES, PURCHASE PRICE, \$15,000.00.

COLUMBUS, OHIO, October 28, 1938.

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 an abstract of title, warranty deed, contract encumbrance record No. 28 and other files relating to the proposed purchase by the Conservation Council

for and in the name of the State of Ohio of a parcel of land which is owned of record by Arthur G. Smith in Put-in-Bay Township, Ottawa County, Ohio, which parcel of land is known as being a part of South Bass (Put-in-Bay) Island lying north of Lot "A" and which is more particularly described as follows:

Beginning at an iron pin on the east side of the county road which iron pin bears North 55 degrees and 31 minutes east 32.42 ft. from a stone on the west side of the county road and which latter stone bears North 12 degrees and 13 minutes West 74 ft. from a stone at the northeast corner of Lot No. 1 of E. J. Dodge's subdivision; thence South 12 degrees and 13 minutes east 87.45 feet to an iron pin; thence South 16 degrees east 118.95 feet to an iron pin; thence North 50 degrees and 25 minutes east along the shore of Squaw Harbor so called 136.5 feet, thence North 80 degrees and 27 minutes east 210.1 ft.; thence north 55 degrees and 15 minutes west along the shore of Lake Erie 175.8 feet, thence North 73 degrees and 32 minutes west 135.75 feet, thence South 55 degrees and 31 minutes west 45.35 feet to a stone, thence in the same course 62.28 feet to the place of beginning containing 1.02 acres more or less according to a survey made by A. C. and L. A. Schultz, Civil Engineers of Sandusky, Ohio, together with all riparian rights thereunto belonging.

As a part of the files relating to the purchase of this property, you have submitted to me a copy of that portion of the minutes of a meeting of the Conservation Council held under date of August 24, 1938. In these minutes of said meeting, it appears that there has been erected on this parcel of land a large club house and that the purpose of the Conservation Council in purchasing this property is to provide housing facilities for the use of employes and agents of the State in connection with the use of the Franz Theodore Stone Laboratory which is located on Gibraltar Island a short distance from the site of this property on Put-in-Bay Island.

With respect to the purchase of property for and in the name of the State of Ohio which is to be under the control and supervision of the Conservation Council, this body as a division and agency of the State has, of course, only such power and authority as are conferred upon it by the statutory law of this State and such implied power and authority as are necessary in carrying out and making effective such express powers as may be granted to it by statute. Section 1435-1, General Code, provides, among other things, that the

Conservation Council may acquire by gift, lease or purchase suitable land for the purpose of establishing state fish hatcheries and may erect thereon such buildings or structures as it shall deem necessary. Although the property here in question is being purchased for the purpose of providing housing facilities for employes of the State in connection with the use of the laboratory above referred to, and although the activities carried on and duties performed by such employes and agents of the State in this laboratory relate directly to the propagation and development of fish life in Lake Erie and elsewhere in the State of Ohio through fish hatcheries owned by the State and managed and controlled by the Division of Conservation, of which fish hatcheries one is located on Put-in-Bay Island a short distance from the property here in question, it may be doubted whether the provisions of Section 1435-1, General Code, are sufficiently comprehensive to authorize the purchase of this property for the purpose above stated. In this connection, it is noted, however, that Section 1430, General Code, which provides for the imposition and collection of fishing license fees, provides further as follows:

"All moneys derived from such licenses are hereby appropriated exclusively for the use of the Conservation Council for the purchase, protection, propagation, preservation, and stocking of fish, including the establishment, operation and maintenance of fish hatcheries, the leasing, purchasing or otherwise acquiring title to land for said hatcheries, constructing fish chutes and dams and other methods of fish propagation and fish culture, and for other proper conservation activities."

I am inclined to the view that the housing of employes and agents of the State at a location such as this which is within a convenient distance of this laboratory where these persons are expected to be employed the year around, is a purpose so related to activities which the Conservation Division and Conservation Council are authorized to carry on under the above quoted provisions of Section 1430, General Code, that it is authorized to acquire the property here in question for the purpose of furnishing the housing facilities required.

In the consideration of this question it is noted that this property is being purchased out of moneys appropriated to the Division of Conservation by Amended Senate Bill No. 369 enacted by the 92nd General Assembly under date of July 12, 1937. As to this, said appropriation act provides as follows:

"For the purpose of carrying out the provisions of Sec-

tions 1430 and 1433, General Code of Ohio, there is hereby appropriated to the Division of Conservation all balances in the Uses and Purposes Fund, Lake Erie Fund, Fishing License Fund, and the fund made up from fees derived from the sale of minnow dealers' permits, as of December 31, 1936, together with all moneys credited and to be credited to said funds during the period beginning January 1, 1937, and ending December 31, 1938. Said funds shall be available for the use of the Division of Conservation for the purposes specified by law.

Immediately upon the taking effect of this act, the Conservation Commissioner shall prepare an itemized statement of proposed expenditures of the funds appropriated in this section, which he shall submit to the director of finance for his approval. However, the Controlling Board is authorized to approve additional transfers to the various budget classifications under personal service, maintenance and additions and betterments as set up in the original schedule of proposed expenditures."

Acting under the authority conferred upon it by said appropriation act in the language above quoted, the Controlling Board approved the purchase of this property and by proper budget classification transferred from the Fishing License Fund the money necessary to pay the purchase price of the property.

Upon examination of the abstract of title of the above described property, which abstract of title is certified by the abstracters under date of September 17, 1938, I find that Arthur G. Smith, the owner of record of this property, has a good and indefeasible fee simple title to the same; and that he owns and holds the same free and clear of all encumbrances except the undetermined taxes on the property for the year 1938, which are a lien thereon, and except the lien of a mortgage here referred to. As to this, it appears from the abstract that under date of June 8, 1938, Arthur G. Smith and Ethelyn D. Smith, his wife, executed a mortgage to The Peoples Banking Company of Oberlin, Ohio, to secure the payment of a promissory note of even date therewith in the sum of \$2500.00 payable one year after date, with interest thereon at six per cent. This mortgage was executed upon the property above described and upon another parcel of land known as and being Lot No. 19 of Peach Point Subdivision, South Bass Island, Put-in-Bay Township, Ottawa County, Ohio. It further appears that under date of August 9, 1938, said mortgagee, The Peoples Banking Company, released from this mortgage said

Lot No. 19 of Peach Point Subdivision, above referred to. Although the notations on the margin of the record of said mortgage, as the same have been abstracted, are somewhat ambiguous with respect to the property covered by such release, I conclude that the mortgagee above named in executing this release intended that the same should be effective only with respect to said Lot No. 19; and that inasmuch as no cancellation of this mortgage is noted in the abstract, the same is still in full force and effect with respect to the property here in question. And I accordingly find that this mortgage is a lien upon the above described parcel of land and upon the appurtenances thereunto belonging to the extent of the amount of money remaining unpaid upon the promissory note secured by said mortgage, and the accrued interest thereon. Provision should be made for the payment and cancellation of this mortgage before the transaction for the purchase of this property is closed by the issuance of voucher and warrant covering the purchase price of the property.

Upon examination of the warranty deed tendered by Arthur G. Smith, the owner of this property, I find that the same has been properly executed and acknowledged by said grantor and by Ethelyn D. Smith, his wife. I further find that the form of this deed is such that the same is legally sufficient to convey the above described property to the State of Ohio, as the grantee therein named, by fee simple title, free and clear of the inchoate dower interest of Ethelyn D. Smith, who joins in the granting clause in said deed, and with a covenant of warranty on the part of said grantors that this property is conveyed to the State free and clear of all encumbrances.

Upon examination of contract encumbrance record No. 28, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the proper appropriation account to the credit of the Division of Conservation to pay the purchase price of this property, which purchase price is the sum of \$15,000.00.

As before noted herein, the Controlling Board has approved the purchase of this property pursuant to the general authority conferred upon it by the appropriation act above referred to by the transfer for the purpose of sufficient moneys from the Fishing License Fund to pay the purchase price of this property in the amount above stated.

Subject only to the exceptions above noted with respect to the undetermined taxes on the property for the year 1938 and with respect to the mortgage above referred to, the title of Arthur G. Smith in and to the above described property is hereby approved; as are, likewise, the warranty deed, contract encumbrance record and other files which

you have submitted for my consideration, all of which files are herewith enclosed.

Respectfully,

HERBERT S. DUFFY

*Attorney General.*

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3163.

APPROVAL—BONDS OF NORWICH TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO, \$20,000.00, DATED OCTOBER 1, 1938.

COLUMBUS, OHIO, October 29, 1938.

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

RE: Bonds of Norwich Twp. Rural School Dist.,  
Franklin County, Ohio, \$20,000.00 (Limited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of building bonds in the aggregate amount of \$20,000, dated October 1, 1938, bearing interest at the rate of  $3\frac{1}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*