

368.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
HIGHLAND COUNTY, I. C. H. No. 261.

COLUMBUS, OHIO, April 22, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

369.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN HANOVER TOWN-
SHIP, COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, April 22, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, O.*

DEAR SIR:—I have examined the encumbrance estimate and abstract of title purporting to cover Tract No. 13, Guilford Lake Park, consisting of 2.36 acres of land, more or less, owned by Lucina A. Gardner and others.

The abstract as submitted was prepared by McMillen & Kelso, Abstracters, Lisbon, Ohio, under date of May 12, 1926, and recertified under date of November 3, 1926.

The abstract as submitted pertains to the following premises situated in the north-west quarter of Section 1, Township 15, Range 4, Hanover township, Columbiana county, Ohio, and is bounded and described as follows:

“Beginning at a post at the southwest corner of said grantors land; thence north along the westerly line of said grantors land 498.00 feet to a stake; thence S. 50° 13' E. 180.65 feet to a stake; thence S. 3° 50' 104.15 feet to a stone in the south line of said grantors land; thence N. 89° 49' W. 312.80 feet to the place of beginning and containing 2.36 acres of land be the same more or less.”

This land is carved out of a part of the northwest quarter of Section No. 1,

“Beginning at a stone on the north line of said section 14 chains and 50 links east of the northwest corner of said section; thence east 5 chains and 71 links to a stone; thence south 39 chains and 83 links to a stone on the south line of said quarter; thence west along the south line of said quarter 19 chains and 77 links to a stone; thence north parallel to and 37 links east of the west line of said section 12 chains and 46 links to a stone; thence south 85° east 14 chains and 13 links to a stone where a wild cherry tree 40 inches in diameter bears north 67° west 35½ links; thence north 28 chains and 31 links to the place of beginning, containing 39.52 acres of land,”

Excepting therefrom the following described property:

“Situated in Columbiana county, being part of the northwest quarter of Section 1, in Hanover township, in said county, beginning at the southwest

corner of said northwest quarter at a stone planted; thence north with west line of the section to the south boundary of John Kerns' lands; thence east with said Kerns' line 24 feet to a corner; thence south parallel to the section line to the south boundary of said quarter section; thence west 24 feet to the place of beginning."

An examination of the abstract reveals the following:

1. The abstract contains no record of the government patent, although attached thereto is a certificate of the auditor of state showing that the north one-half of section 1, township 15, range 4, was sold to John Howard on June 19, 1804, and the southwest quarter of said section 1 was sold to John Howard September 1, 1804. The abstract does not show any transfers or proceeding with reference to said real estate from the dates indicated on the auditor of state's certificate above mentioned until the administration of the estate of Samuel Filson, wherein it is noted that on July 16, 1853, Samuel Small was appointed administrator. A note on the abstract recited: "Find no deed to Samuel Filson on record."

2. On April 16, 1863, Daniel Hoopes bought the real estate and on November 29, 1865, sold a portion of said land described as follows:

"Beginning at the southwest corner of said northwest quarter at a stone planted; thence north with west line of the section to the south boundary of John Kerns' lands; thence east with said Kerns' line 24 feet to a corner; thence south parallel to the section line to the south boundary of said quarter sections; thence west 24 feet to the place of beginning."

A note on the abstract indicates that this piece was sold for a roadway. The abstract shows nothing further in respect to the title to this small strip of land, and in view of the fact that a part of said strip is included in the 2.36 acres of land desired to be purchased by the state, the abstract should be continued as to said strip of land to date.

3. The abstract shows that Daniel Hoopes deceased in 1884 and Elisha Hoopes and Joseph Hoopes were appointed administrators. Nothing further is shown in connection with the administration of his estate, and of course, it follows that no settlement is noted. However, the land was transferred by the reputed heirs in the months of March and April, 1884, to Elisha Hoopes. Satisfactory evidence should be obtained by affidavit or otherwise to show who were the heirs at law of Daniel Hoopes.

4. The abstract shows that Levi Gardner died November 4, 1906; and Lucina Gardner was appointed administratrix. In the application for letters of administration, it is recited that Levi Gardner died intestate, leaving Lucina Gardner as his widow, and Edwin D. Gardner, son, his only heir at law. In an affidavit attached to the abstract of Tract 11 made and executed by Daniel F. Campf on July 22, 1926, it is said that Edwin D. Gardner died at least eleven years prior to the affidavit, without issue; that Lucina Gardner had one brother Benjamin F. Campf, who died April 16, 1923, leaving the following named children: Harry Campf, Margaret L. Campf, D. F. Campf, Martha A. Sanor and S. U. Campf, who are his only heirs at law. I note that the director of highways' proposal to purchase this 2.36 acre tract has been accepted by Lucina A. Gardner, Martha A. Sanor, Margaret L. Camp, Harry G. Camp, S. U. Camp and D. F. Camp.

This property descended as intestate property and under the terms of Section 8573, General Code, at the death of Levi Gardner's son, Edwin D. Gardner, Lucina Gardner as the mother of Edwin D. Gardner, in addition to her dower estate, became possessed of an estate for life in the property. Upon her death, she now being eighty years of age, the estate will pass to the next of kin of Edwin D. Gardner, the son of the blood of his father Levi Gardner, and not to the brothers and sisters of Lucina

Gardner or their legal representatives. It therefore follows that the children of Benjamin F. Campf, deceased, brother of Lucina Gardner, have no interest in the real estate under consideration and are not the proper parties to make conveyance of said real estate to the state of Ohio.

Investigation should be made as to who are the next of kin of Edwin D. Gardner, son of the blood of his father Levi Gardner.

5. The last continuation of the abstract having been made in November, 1926, it is not shown whether the taxes for the first half of the year 1926, payable in December, 1926, have been paid. The certificate of the abstracter shows that no examination has been made in the U. S. courts.

The encumbrance estimate submitted with the above abstract is numbered 3983, is dated December 22, 1926, and is duly certified by the director of finance under date of December 23, 1926. Approval of the encumbrance estimate is withheld until the submission of an abstract covering the strip of land referred to in 2 above.

No deed is submitted with the abstract although a blank form of Ohio warranty deed containing a description of the premises proposed to be conveyed was submitted. Since this deed has not been prepared and executed, this department is unable to pass upon the same.

I am returning your file relating to Tract No. 13, including the abstract of title, encumbrance estimate and other papers. When the corrections above requested have been made, I shall be glad to re-examine the same and render my opinion thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.

370.

APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—
EDWARD STINGEL.

COLUMBUS, OHIO, April 22, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date resubmitting for my approval the official bond of Edward Stingel.

The bond has been corrected by adding the name of the Resident Deputy State Highway Commissioner after the words "the said" in line eight of the body of the bond.

This correction was made by the agent of the Surety Company in the presence of the Secretary of the Department of Highways and Public Works as it appears from a certificate enclosed with said bond and letter of transmittal.

With this correction made I find that said bond is correct in form and legal. I am therefore returning this bond to you with my approval endorsed thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.