

scribed property, subject to the exceptions and reservations above noted, to the State of Ohio by fee simple title.

Upon examination of contract encumbrance Record No. 40 relating to the purchase of the above described property, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the appropriation account to the credit of your department to pay the purchase price of the above described parcel of land and the appurtenances thereunto belonging, which purchase price is the sum of \$6,000.00. It likewise appears from this contract encumbrance that the purchase of this property has been approved by the Controlling Board, which board has released from the appropriation account the moneys necessary for the purchase of this and other properties needed in connection with the Nimi-sila Creek Basin Reservoir Project.

I am herewith returning to you the certificate of title and deed above referred to. I am retaining contract encumbrance Record No. 40 for the reason that the same relates as well to Lot No. 15 in C. C. McCue's Little Farms Addition, the title to which will be made the subject of a separate opinion.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2425.

APPROVAL.—CERTIFICATE OF TITLE AND OTHER INSTRUMENTS, STATE OF OHIO, THROUGH DIRECTOR, DEPARTMENT OF PUBLIC WORKS, GRANTOR, FRED H. HUGHES, DESIGNATED TRACT OF LAND, GREEN TOWNSHIP, SUMMIT COUNTY, OHIO, USE, NIMISILA CREEK BASIN RESERVOIR, PURCHASE PRICE, \$1200.00.

COLUMBUS, OHIO, May 10, 1938.

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, warranty deed and contract encumbrance record relating to the proposed purchase of a tract of land which is owned of record by one Fred H. Hughes in Green Township, Summit County, Ohio, and which, together with the exceptions and reservations therein noted, is described in the warranty deed tendered to the State of Ohio by said Fred H. Hughes as follows:

Being Lot Number Fifteen (15), in C. C. McCue's Little Farms in the West half of the Northwest quarter of Section 19, Green Township, as surveyed by S. G. Swigart & Sons, and recorded in Plat Book 36, Page 7, Summit County Records.

Said lot is subject to all legal highways.

Excepting and reserving from the above described premises the land conveyed to The Canton, Massillon and Akron Railroad Company by deed dated August 14, 1901, and recorded in Volume 273, Page 613 of Summit County Records.

Upon examination of the certificate of title which was made by The Northern Ohio Guarantee Title Company under date of May 5, 1938, I find that Fred H. Hughes obtained title to this property by quit claim deed from his wife, Ann E. Hughes, under date of March 27, 1937. Prior to this time, the title to this property was vested in Holly Peden, Virginia Hancock and Ruth K. Edwards, as tenants in common, by a deed executed by Augusta M. McCue, Executrix of the estate of C. Clifton McCue, for the purpose of carrying out the provisions of a land contract made by C. Clifton McCue, then the owner of the property, and Augusta M. McCue, his wife. Holly Peden, Virginia Hancock and Ruth K. Edwards obtained title to this property by the deed above referred to on December 3, 1931; and thereafter in October, 1932, Holly Peden, unmarried, conveyed to Virginia Hancock her undivided one-third interest in this property, subject to a reservation to Holly Peden of a one-third interest in the oil and gas and other minerals in the land, with the provision that said deed was intended to convey to said Virginia Hancock only the undivided one-third interest of Holly Peden in the surface of the land. Thereafter, on December 3, 1932, Virginia Hancock and Ruth K. Edwards, being then the owners of this property except as to the undivided one-third interest of Holly Peden in the oil and gas and other minerals in the land, conveyed the property above described to Ann E. Hughes. This deed contained the following reservations:

"The grantors herein reserve and except from this deed all the natural gas, oil, and all mineral rights for themselves, a part of said natural gas, oil and mineral rights having heretofore been leased to other parties; and this deed is meant to convey only the surface of the land above described, all of which is fully understood and hereby agreed to by the grantee herein."

It appears, therefore, that the only title and interest Fred H. Hughes now owns and holds in this property is of the land exclusive of the oil and gas and other minerals therein and that this is all that he is convey-

ing to the state by the deed which he has tendered which likewise contains a reservation with respect to the natural gas and oil rights in the property.

In this connection, it is noted that on February 16, 1931, J. R. Layman, L. L. Cochran and J. L. Edwards, who, apparently, at this time held the above described property by assignment of the land contract above referred to which was executed by C. Clifton McCue and Augusta M. McCue to Casper Kramer and Susie Kramer, executed an oil and gas lease to one Arthur L. Smith. Thereafter, fractional parts of the interest of Arthur L. Smith, as lessee under this oil and gas lease, were assigned and reassigned by a number of different parties with the result that The Columbian Carbon Company now appears to be owner of all or of the greater part of the interest of Arthur L. Smith as lessee under this oil and gas lease. This oil and gas lease is, of course, an encumbrance on the property; although, in a sense, it is not a matter of any interest to the state in this transaction for the reason that the state is purchasing the land subject to a reservation of oil and gas and other minerals in the land.

Considering the property here in question to be only that part of Lot No. 15 in C. C. McCue's Little Farms Addition which was and is exclusive of the right of way of The Canton, Massillon and Akron Railroad Company through said land and, further, considering the land here in question as subject to the reservation of gas, oil and other minerals to persons other than said Fred H. Hughes, I find that said Fred H. Hughes has a good and indefeasible title to this property and that he owns and holds the same free and clear of all encumbrances except the oil and gas lease above noted and except the following which are here noted as further exceptions to the title in and by which he owns and holds this property.

1. On March 16, 1907, Charles A. Smith, then the owner of a larger tract of land which included the parcel here in question, executed an instrument in writing in and by which he conveyed to one Charles E. Wise the right to construct a telephone line, together with the necessary poles, along the west side of the grantor's premises and along the east side of the highway contiguous to said premises. I am not advised by the certificate of title or by any other information in the files submitted to me what, if anything, was done with respect to the construction of a telephone line on the premises under this easement, or how this telephone line, if one was constructed, affects the property here under consideration. You are doubtless familiar with the facts in regard to this matter and the same is here noted merely for the reason that the same is or may be an encumbrance upon the property.

2. On November 13, 1908, said Charles A. Smith executed to The Tide Water Pipe Line Company, Ltd., an instrument in deed form in and by which he conveyed to said company a right of way for a pipe line

which said company was authorized to lay down in and through the larger tract of land then owned by Smith and which, as above noted, included the parcel of land which is here under investigation. No information is furnished in the certificate of title as to what, if any, pipe lines were constructed by The Tide Water Pipe Company, Ltd., pursuant to the authority granted to it by this instrument or as to how said pipe line, if one was constructed, affects the particular parcel of land above described. I assume that you are likewise familiar with the facts in regard to this matter.

3. It appears from the certificate of title that the taxes on this property for the last half of the year 1937, amounting to \$1.72, as well as the undetermined taxes on the property for the year 1938, are a lien.

Upon examination of the warranty deed tendered by Fred H. Hughes, I find that this deed has been properly executed and acknowledged by said grantor and by Ann E. Hughes, his wife, who thereby remises, releases and quit claims to the State of Ohio, as the grantee therein, all of her right and title of dower in the premises. I further find upon examination of this deed that the form of the same is such that it is legally sufficient to convey this property to the State of Ohio by fee simple title, with a covenant warranty that the property is free and clear of all encumbrances whatsoever. Said deed is accordingly hereby approved.

Contract encumbrance record No. 40, which has been submitted to me as part of the files relating to the purchase of this property, has been properly executed and the same shows a sufficient balance in the appropriation account to the credit of your department for the acquisition of lands for the Nimisila Creek Basin Reservoir Project to pay the purchase price of the above described property, which purchase price is the sum of \$1200.00. I likewise note from recitals contained in this contract encumbrance record that the purchase of this property has been approved by the Controlling Board, which board has released from the appropriation account the money necessary to pay for the property.

I am herewith returning to you said certificate of title, warranty deed and contract encumbrance record for your further attention in closing the transaction relating to the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.