

2470.

## APPROVAL, BONDS OF MARION COUNTY—\$46,188.00.

COLUMBUS, OHIO, August 21, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

2471.

## APPROVAL, BONDS OF THE CITY OF LAKEWOOD, CUYAHOGA COUNTY—\$16,325.00.

COLUMBUS, OHIO, August 21, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

2472.

## DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF ALMA M. TEMPLETON AND ELSIE H. RADA, FOR HAWTHORNDEN FARM, CLEVELAND STATE HOSPITAL, CUYAHOGA COUNTY, OHIO.

COLUMBUS, OHIO, August 21, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion an abstract of title pertaining to certain real estate which the State of Ohio purposes to purchase from Alma M. Templeton and Elsie H. Rada for the Hawthornden Farm of the Cleveland State Hospital.

The abstract of title was prepared by The Land Title Abstract and Trust Company of Cleveland, Ohio, bears the certification of that company as of August 6, 1928, and pertains to the following described real estate situated in the township of Bedford, County of Cuyahoga, and State of Ohio, and known as being part of original Bedford Township Lot No. 92, and bounded and described as follows:

“Beginning in the center line of Alexander Road, which is also the northerly line of said Original Lot No. 92, at a point which bears South 89° 09' East, 1222 47/100 feet from the intersection of said center line with the westerly line of Original Lot No. 92; and from which beginning point an

iron monument in the southerly line of Alexander Road bears South 00° 51' West, 30 feet; thence South 00° 51' West, passing through the above described iron monument, 1116 52/100 feet to an iron monument in the northerly line of land now or formerly owned by Benjamin D. Nicola; thence South 76° 55' 45" East, along the northerly line of said Nicola's land, 131 53/100 feet to an iron monument; thence North 26° 34' 15" East, along the northerly line of said Nicola's land, 198 feet to an iron monument; thence North 50° 19' 30" East, along the northerly line of said Nicola's land, 54 03/100 feet to an iron monument in the westerly right of way line of The Lake Erie and Pittsburgh Railroad, which is distant 80 feet westerly at right angles from the center line thereof; thence North 27° 30' 35" West, along the westerly line of the 'third parcel' as conveyed to The Lake Erie and Pittsburgh Railroad Company, by deed recorded in Volume 1035, Page 259 of Cuyahoga County Records, 188 20/100 feet to an iron monument; thence North 00° 09' 55" East, along the westerly line of land conveyed to The Lake Erie and Pittsburgh Railroad, as aforesaid, 265 80/100 feet to an iron monument; thence North 33° 54' 25" East, along the westerly line of land conveyed as aforesaid, 215 40/100 feet to an iron monument; thence North 12° 06' 25" East, parallel with the center line of said Lake Erie and Pittsburgh Railroad, and distant 175 feet westerly at right angles therefrom, 100 feet to an iron monument; thence South 77° 53' 35" East, at right angles to said right of way, 125 feet; thence North 12° 06' 25" East, parallel with the center line of said right of way and distant 50 feet westerly at right angles therefrom, 250 08/100 feet to its intersection with the center line of Alexander Road, passing through an iron monument in the southerly line of said road, distant 30 59/100 feet from the center line thereof; thence North 89° 09' West, in said center line of Alexander Road, 471 42/100 feet to the place of beginning, and containing 6 689/1000 acres of land, according to survey by The Lander Engineering Company, dated July 12, 1927, be the same more or less, but subject to all legal highways."

Examination of the abstract reveals some defects in the early history of the title which may, however, be passed because of lapse of time, and in my opinion shows that Alma M. Templeton and Elsie H. Rada have a good and merchantable title in and to the real estate above described, subject to the following:

1. Section 39 of the abstract shows the estate of Andrew Alexander who died on or about May 4, 1895, leaving no widow, and J. C. Alexander, a son and Almira R. Alexander, a daughter, as his next of kin. Section 40 shows an affidavit of J. C. Alexander to the effect that he and *Rochel A. Alexander* (probably Rachel A. Alexander) are the sole surviving heirs at law of Andrew Alexander. Section 41 of the abstract shows a warranty deed from John C. Alexander and wife, and Rachel A. Alexander to The Lake Erie and Pittsburgh Railway Company. While it is probable that Almira R. Alexander and Rachel A. Alexander (or Rochel A. Alexander) are one and the same person, I am of the opinion that in view of the fact that the above events and transactions are of comparatively recent date, an affidavit should be secured showing the facts.

2. The taxes for the year 1928 and any special taxes or assessments which may have been levied against the property are a lien.

You have also submitted a warranty deed from Alma M. Templeton and Elsie H. Rada to the State of Ohio covering the real estate above described which warrants the real estate to be free from all encumbrances whatsoever "except taxes and assessments both general and special for the year 1929 and thereafter, and ordinary

restrictions of record all of which the Grantee assumes and agrees to pay," and in which Harry R. Templeton, husband of Alma M. Templeton and John J. Rada, husband of Elsie H. Rada release their right and expectancy of dower in the premises. The deed was executed by the persons above named on the 19th day of July, 1928. There is some question in my mind as to the meaning of the words quoted above from the warranty clause "and ordinary restrictions of record." This language apparently refers to building and other like restrictions of which none are shown by the abstract, and it is therefore my opinion that a new deed should be prepared omitting the words last above quoted. The deed recites the consideration for the transfer to be the sum of \$10.00. In my opinion the full amount of the consideration should be stated.

You further request an opinion as to how the matter of the 1928 taxes which have not been determined but are a lien on the property and which are to be paid by the grantors, should be handled. Among the papers submitted is a letter from Harry R. Templeton directed to the State Architect and Engineer, making reference to the taxes, and stating that the taxes due and payable in December, 1928, will amount to approximately \$62.14, and that the taxes due and payable in June, 1929, will include a paving assessment of about \$100.00 plus an approximate amount of \$65.00 for taxes, making the total sum necessary to pay taxes and assessments for the year 1929, approximately \$225.00. In my opinion the state will be fully protected if the sum of \$225.00 be deducted from the purchase price of the property and retained by the state until such time as receipts showing the payment of the taxes and assessments shall have been presented by the grantors.

You have further submitted evidence showing that the amount necessary for the purchase of the above described real estate has been released by the Controlling Board, as required by Section 12 of House Bill No. 502 of the 87th General Assembly. You have also submitted an encumbrance estimate bearing No. 1195, in favor of Alma M. Templeton and Elsie H. Rada, in the sum of \$1,700.00, for the purchase of the above described real estate, which bears the certification of the Director of Finance under date of August 21, 1928, to the effect that there are unencumbered balances legally appropriated sufficient to pay for the same.

I am returning herewith the abstract of title, warranty deed and other papers submitted in this connection.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2473.

BOARD OF EDUCATION—CREATION OF NEW SCHOOL DISTRICT—  
COUNTY BOARD TO MAKE DIVISION OF FUNDS—INDEBTEDNESS  
—WHEN EFFECTIVE—PURCHASES.

SYLLABUS:

1. *A county board of education upon the creation of a new school district, by authority of Section 4736, General Code, is authorized to make an equitable division of the funds and indebtedness between the new district and other districts from which any portion of the territory comprising the new district has been taken, either at the time of the passage of the resolution creating the new district, or later, as it sees fit, but if made before the expiration of thirty days after the passage of such resolution*