

108.

STATUS — A B S T R A C T O F T I T L E , D E E D , E T C . , S T A T E
T H R O U G H C O N S E R V A T I O N C O M M I S S I O N E R , D E S I G -
N A T E D L A N D , H E N R Y H . B U R M A N , G R A N T O R , A L L E N
T O W N S H I P , H A N C O C K C O U N T Y , O H I O , U S E , P A R K P U R -
P O S E S , \$ 3 , 5 9 4 . 7 5 .

C O L U M B U S , O H I O , F e b r u a r y 7 , 1 9 3 9 .

H O N . D . G . W A T E R S , *Conservation Commissioner, Columbus, Ohio.*

D E A R S I R : You have submitted for my examination and approval abstracts of title, warranty deed, contract encumbrance record No. 45 and other files relating to the purchase by the Conservation Council for and in the name of the State of Ohio of certain tracts of land owned of record by one Henry H. Burman in Allen Township, Hancock County, Ohio, which said several tracts of land are more particularly described as follows :

Being all the land in the southeast quarter of the northeast quarter of Section 18, Allen Township, R. 11 E., T. 2 N., Hancock County, Ohio, and more particularly described as follows :

Beginning at a point in the southwest corner of the southeast quarter of the northeast quarter of Section 18, Allen Township, Hancock County, said point being the common corner between the lands of the grantor, John Roth, Arbey D. Barnd, and F. and M. Romick and continuing N. 0° 7' W. a distance of 1329.18 feet to a point, said point being in the center of an old corner post located in the center of the northeast quarter of said Section 18 ;

thence S. 89° 32' E. a distance of 1311.82 feet to a point in the center of the county road; thence S. 0° 12' E. a distance of 1328.25 feet along the center line of the above-mentioned county road, said center line being a common line between Sections 17 and 18 to a point, said point being the southeast corner of the northeast quarter of said Section 18; thence N. 89° 35' W. along the half section line, a distance of 1313.70 feet to the place of beginning and containing 39.83 acres, more or less, and subject to all legal highways.

Also, a strip of land along the south side of the northeast quarter of the northeast quarter of Section 18, T. 2 N., R. 11 E., Allen Township, Hancock County, Ohio, and more particularly described as follows:

Beginning at a point in the southwest corner of the northeast quarter of the northeast quarter of said Section 18 and running N. 1° 0' W. along the quarter section line a distance of 230.29 feet to a point; thence due east a distance of 1314.96 feet to a point in the center of the county road, thence S. 0° 12' E. along the center line of said county road a distance of 240.83 feet to a point, said point being the southeast corner of the northeast quarter of the northeast quarter of said Section 18; thence N. 89° 32' W. along the quarter section line a distance of 1311.82 feet to the place of beginning and containing 7.10 acres more or less and subject to all legal highways.

It is noted from the descriptions of these tracts of land as herein-above set out that one of said tracts comprises all of the land in the southeast quarter of the northeast quarter of Section 18, Allen Township, Range 11 East, Township 2 North, in said county, and that the other tract of land here under investigation is a 7.10-acre strip of land off the south side of the northeast quarter of the northeast quarter of said section, township and range. Referring to the first tract of land above mentioned, which comprises 39.83 acres, I find from the abstract of title therefor submitted to me that said Henry H. Burman has a good and indefeasible fee simple title to said tract of land, and that he owns and holds the same free and clear of all encumbrances, except the taxes on the property for the year 1938, and except such assessments as may have been levied upon the property and which remain unpaid. As to this, it appears from the abstract of title that "the taxes and assessments due and payable in December, 1938, in the sum of Five Dollars and Seventy-six Cents (\$5.76) are not paid." It does not appear, therefore, whether the only assessment against this property is that due and payable for the year 1938 or whether, in addition thereto, there is a levy assessment upon the property which is due and payable in subsequent years. Inasmuch as this property is being

conveyed to the State free and clear of all encumbrances, provision should be made for the payment and satisfaction of all taxes and assessments on this property before the transaction for the purchase of this property is closed by the payment of the purchase price thereof. In addition to the exception above noted with respect to the taxes and assessments on this property, it is noted that in December, 1908, Henry Burman executed an instrument in deed form to the Northwestern Ohio Natural Gas Company, in and by which said company was given the right to lay, maintain and operate a pipe line for the transportation of gas over and through this tract of land. I am not advised by this abstract of title or by any other information in the files submitted to me what, if anything, was done by the Northwestern Ohio Natural Gas Company with respect to the construction and maintenance of a pipe line in and upon this tract of land pursuant to the easement granted to it by the instrument above referred to. If any such pipe line was constructed, you or your engineers in charge of the construction of the project for which this property is being acquired, are doubtless informed as to the existence of such pipe line and as to how the same will affect any use which you may desire to make of this property in connection with said project.

As before noted, a part of the above described lands being acquired by the State of Ohio in connection with the Van Buren Reservoir project is a 7.10-acre parcel of land off the south side of the northeast quarter of the northeast quarter of said Section 18 in the township and range before referred to. On examination of the abstract of title of the northeast quarter of the northeast quarter of said section, I find that said Henry H. Burman has a good and indefeasible fee simple title to all of the land in said quarter quarter section and that he owns and holds the same free and clear of all outstanding interests and encumbrances other than those here noted as exceptions to his title, to wit:

1. On December 7, 1934, Henry H. Burman, unmarried, executed a mortgage on the northeast quarter of the northeast quarter of said Section 18 to one Love Maye Smith to secure the payment of an obligation in the amount of \$1500.00. This mortgage has not been canceled of record and the same is a lien on all of the property in said quarter quarter section, including the 7.10-acre parcel of land above described, to the extent of the amount remaining unpaid upon the obligation secured by this mortgage, together with the interest thereon. Provision should be made, of course, for the payment and satisfaction of this mortgage before closing the transaction for the purchase of this property.

2. The taxes on the whole of said northeast quarter of the northeast quarter of Section 18 for the year 1938, amounting apparently to the sum of \$27.80, are unpaid and are a lien upon the property. Nothing is said in the abstract as to any special assessments upon the property; but investigation with respect to such assessments, if any, should be made

before the purchase of this property is completed by the payment of the purchase price therefor.

3. On the 24th day of July, 1908, Susan Burman, who then owned an undivided fee interest in said quarter quarter section, as well as a life interest in the whole of the same on assignment of dower, executed an instrument in deed form, together with three of her sons having undivided fee interests in the property, to the Northwestern Ohio Natural Gas Company in and by which said company was granted the right to lay a pipe line and a telegraph line in and upon said tract of land. I am not advised as to whether any pipe line or telegraph line was constructed by the Northwestern Ohio Natural Gas Company or by any other person or corporation claiming under or through it, under the easement granted to it by the instrument above referred to. Investigation should be made with respect to the existence of any such pipe line or telegraph line; and if any such line has been constructed or erected, consideration should be given to the question as to the extent which any such line or lines will affect any use that you may desire to make of this property in connection with the reservoir project for which this property is purchased. In this connection, it is observed as particularly desirable that there should be no pipe line or telegraph line upon that part of the property which you are purchasing in connection with this project and which is to be flooded for reservoir purposes.

In this connection, it is noted that some time earlier, to wit, on January 9, 1890, said Susan Burman, by an instrument in deed form, granted to the City of Findlay the right to lay and maintain a pipe line in and upon a strip of land described as being twenty-five feet off the north and east sides of said quarter quarter section. As to this, it is probable that any pipe line laid down and maintained under this easement would not interfere with the use which you desire to make of this property.

4. On and prior to December 3, 1880, said quarter quarter section was owned by one Henry Burman, father of Henry H. Burman, who now owns and holds this land. On the death of Henry Burman on the date above indicated, his title and interest in and to this property descended to his nine children subject to the dower interest of his widow Susan Burman, who later on assignment of dower obtained a life interest in the whole of said quarter quarter section. Charles E. Burman, one of the sons of Henry Burman and who was a boy five years of age at the time of the death of his father, later and while he still owned and held an undivided one-ninth fee interest and title in and to said property, married one Lizzie Burman, who on October 6, 1917, obtained a divorce from said Charles E. Burman on account of his aggression and by said divorce decree obtained a restoration of her maiden name of Lizzie Overholt. Charles Burman later married one Cora Burman and they, together with his brothers and sisters owning undivided interests in the fee of the land, conveyed their interests to Henry H. Burman who now owns and holds the whole of the

fee, title and interest in and to this quarter quarter section of land. However, there is nothing in any of the files submitted to me to show that said Lizzie Burman or Lizzie Overholt was ever barred of her dower in the undivided one-ninth interest which her former husband Charles E. Burman formerly owned and held in this land. In this situation, it is apparent that if said Lizzie Overholt is still living, she still has a dower interest in this undivided one-ninth interest, which dower is inchoate of said Charles E. Burman is still living and which is a consummated dower interest if he be dead. This dower interest, if it is still outstanding, is inconsequential in amount and value with respect to the 7.10-acre tract of land which the State is acquiring off the south end of said quarter quarter section. However, some inquiry with respect to this matter should be made before closing the transaction for the purchase of this property.

Upon examination of the warranty deed tendered by Henry H. Burman, I find that said deed has been properly executed and acknowledged and that the form of this deed is such that the same is legally sufficient to convey the above described tracts of land to the State of Ohio by fee simple title, with a covenant of warranty that the property is conveyed to the State of Ohio free and clear of all encumbrances whatsoever. In this connection, it is noted that this deed is signed and acknowledged by Henry H. Burman only. I assume from this that the former wife of said Henry H. Burman is now dead and that he has not since remarried. This is a matter which should be checked before closing the transaction for the purchase of the property.

Upon examination of contract encumbrance record No. 45 which has been submitted to me as a part of the files 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 transferred appropriation account to the credit of the Division of Conservation under the item of G-1 Lands set up on transfer of moneys by the Controlling Board, to pay the purchase price of the above described property, which purchase price is the sum of \$3594.75. And on the considerations noted in my opinion to you with respect to the John Roth lands, I am of the opinion that the moneys covered by this contract encumbrance record are now available for the payment of the purchase price of this property, notwithstanding the expiration of the biennium covered by Amended Senate Bill No. 369.

Subject to the exceptions above noted, I am approving the title of Henry H. Burman in and to the two tracts of land above described and I am likewise approving said warranty deed, contract encumbrance record No. 45 and other files submitted to me relating to the purchase of this land. Inasmuch, however, as the lands herein question are being purchased by the Conservation Council in part, at least, for park purposes, such purchase by the Conservation Council is subject to the approval of the Attorney General under the provisions of Section 472, General Code. In this

situation, you should not, of course, close the transaction for the purchase of this property until, upon further investigation, I am able to approve the policy of the Conservation Council in acquiring this property for and in connection with said reservoir and park project. I trust that I shall be able to advise you further in connection with this matter within the next few days.

Respectfully,

THOMAS J. HERBERT,

Attorney General.