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## APPROVAL—ABSTRACT OF TITLE TO LAND IN HUNTINGTON TOWNSHIP, LORAIN COUNTY, OHIO—GUY B. AND JENNIE C. FINDLEY.

COLUMBUS, OHIO, September 18, 1936.

HON. CARL E. STEEB, *Secretary, Board of Control, Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR: There was recently submitted to me for my examination and approval an abstract of title of three parcels of land, comprising 375 acres, in Huntington Township, Lorain County, Ohio, which, under date of April 17, 1936, were conveyed to the state of Ohio by a warranty deed executed by Guy B. Findley and Jennie C. Findley, husband and wife, which deed contains certain conditions with respect to the use to be made of the lands thereby conveyed to the state and which likewise reserves to the grantors all the oil and gas under and within said lands and the right to lease the same for the production thereof during the life of said grantors or of either of them.

The lands above referred to have been acquired by the Board of Control of the Ohio Agricultural Experiment Station for the use of the Forestry Division of said department as a gift or donation of these lands by the grantors above named. The deed in and by which the lands are conveyed to the state of Ohio provides that the Board of Control of the Ohio Agricultural Experiment Station, or a succeeding similar body, so long as it may exist, shall have the management of said lands. It is further provided therein that "This deed is made as a gift, and is given and accepted upon the express condition and for the sole consideration that said lands shall forever be used exclusively as a State Forest, for the production of timber and for experiments with forestry projects. Should said lands or a substantial part thereof cease to be so used, they shall then revert to the grantors, their heirs or assigns." The reservation contained in said deed is as follows:

"Grantors reserve and except all the oil and gas under and within said lands, and the right to lease the same for the production thereof, so long as either or both of them may live."

Under the provisions of section 1177-10a, General Code, the Board of Control of the Ohio Agricultural Experiment Station is authorized to acquire by gift and hold in the name of the state, lands for state forest park purposes and by section 1 of House Bill No. 571, enacted by the

91st General Assembly under date of December 20, 1935, the Board of Control of the Ohio Agricultural Experiment Station is authorized to accept gifts, donations or contributions of land suitable for forestry or park purposes. In their application to the deed of conveyance here under consideration, these sections of the General Code should be read in connection with section 18, General Code, which, among other things, authorizes the state to receive lands or other property by gift and to hold and apply the same according to the terms and conditions of the gift. This section of the General Code further provides that such gifts of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation.

Upon consideration of the statutory provisions above noted, I am quite clearly of the opinion that the state of Ohio, acting through the Board of Control of the Ohio Agricultural Experiment Station, is authorized to accept the gift or donation of these lands subject to the condition in the deed of conveyance that the lands are to be used exclusively as a state forest for the production of timber and for experiments in forestry projects. With respect to the reservation contained in this deed by which the grantors retained the ownership of all of the oil and gas under and within the lands conveyed, together with the right to lease such minerals for the production thereof, I cannot say, in view of the use which is to be made of the surface of the land by the Division of Forestry of the Ohio Agricultural Experiment Station, that this is an unreasonable reservation. As I see it, this reservation could be deemed unreasonable within the meaning of section 18 of the General Code only if the reservation and the necessary operations in producing the oil or gas reserved would prevent the use of the surface of the land for the purposes contemplated and provided for by the deed. I am unable to say that this will be the necessary effect of this reservation or of such operations as may be carried on for the production and removal of the oil or gas reserved and, for this reason, I am approving this deed with the conditions and reservations therein contained.

Upon examination of the abstract of title of the lands conveyed to the state by the deed above referred to, which I find to be executed and acknowledged by the grantors therein in the manner provided by law, I find that although there are some discrepancies in the early history of the title to these lands, Guy B. Findley and Jennie C. Findley, as tenants in common, had a good merchantable fee simple title to this property at the time of their conveyance of the same to the state. I further find that as of said date and as of August 1, 1936, when the last extension to the abstract of title was certified by the abstracter, this property was and is free and clear of all encumbrances except the taxes on the property for the last half of the year 1935, amounting to \$84.42, and the undetermined

taxes on the property for the year 1936. In the deed by which this property was conveyed to the state, there is a warranty against all encumbrances except taxes and assessments that become due and payable on June 20, 1936. The taxes here referred to are those for the last half of the year 1935 and I assume from this provision in the deed and the acceptance thereof by the state, acting through your department, that the grantors are not required to pay the taxes for the last half of the year 1935 or the undetermined taxes for the year 1936. By this deed the state obtains a fee simple title to all the land other than the oil and gas in place therein which are reserved to the grantors by the deed. In this situation, the lien of the state on this property for taxes for the last half of the year 1935 and for the year 1936 became merged in the larger title to the lands which the state acquired by this deed. However, in making this observation, I am not expressing any opinion upon the question of the power and authority of the county auditor to assess taxes on the separately owned mineral rights reserved by the grantors in this deed.

It appears further from my examination of the abstract of title submitted to me that these lands are subject to the encumbrance of an oil and gas lease executed by one Fred J. Mohns, then the owner of these lands, to The Ohio Fuel Gas Company. This lease, which was executed under date of August 18, 1932, was thereafter assigned by The Ohio Fuel Gas Company to The Preston Oil Company which is now the owner and holder of this lease. It is obvious that this oil and gas lease, although the same is an encumbrance upon the lands conveyed to the state, is one pertaining to the reservation of oil and gas contained in the deed; and upon the considerations above noted with respect to this reservation, I am inclined to the view that this encumbrance is not one which in any way would affect the authority of the Board of Control of the Ohio Agricultural Experiment Station to accept the conveyance of these lands for the purposes stated in the deed.

With the observations above made, I am herewith returning with my approval the abstract of title and warranty deed which you submitted to me.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*