

property acquired and to be acquired in connection with the Kiser Lake Project.

Subject only to the exceptions above noted, I am approving the title of Floyd Frank and Rebekah Frank in and to the property above described and I am likewise approving said warranty deed, contract encumbrance record No. 22 and other files relating to the purchase of this property, all of which are herewith returned to you to the end that a proper voucher may be issued covering the purchase price of this property.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General*

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315.

APPROVAL — ABSTRACT OF TITLE, CONTRACT ENCUMBRANCE RECORD, WARRANTY DEED, ETC. FOR LAND IN ERIE TOWNSHIP, OTTAWA COUNTY, OHIO, WALTER H. ZOSCHKE, AS CORRECTED.

COLUMBUS, OHIO, March 23, 1937.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 192 and other files relating to the proposed purchase by the State of Ohio of a tract of land which is now owned of record by one Walter H. Zoeschke in Erie Township, Ottawa County, Ohio, which is more particularly described as being that part of the east half of the west half of the northeast quarter of Section No. Thirty-three (33), in Town Seven (7) North, Range No. Sixteen (16) East, which lies north of the public highway known as Ohio State Route No. 2, containing 7.6 acres of land, be the same more or less but subject to all legal highways.

Upon examination of the abstract of title submitted to me, which abstract of title is certified by the abstracter under date of October 16, 1936, and which is supplemented by certain proceedings relating to the title to this property since said date, I find that said Walter H. Zoschke has a good merchantable fee simple title to the above described tract of land and that the same is free and clear of all liens, encumbrances and objections other than those here noted as exceptions:

1. The tract of land here in question and a larger tract of land of which the same is a part were formerly owned by one Mary I. Zoschke, the mother of Walter H. Zoschke and of his brothers Albert E. Zoschke, George A. Zoschke and Andrew W. Zoschke. These four brothers were the only living children and heirs at law of Mary I. Zoschke at the time of her death in July, 1927, and they obtained title to this property upon the death of Mary I. Zoschke under her last will and testament in and by which she devised the property owned by her to these four children subject to a life estate in her husband, Edward Zoschke, who is now deceased.

On May 23, 1931, Walter H. Zoschke obtained title to the undivided interests of Albert E. Zoschke and George A. Zoschke in and to this land by a warranty deed executed to him by the brothers above named and by their respective wives. Thereupon and thereafter until the 27th day of January, 1937, Walter H. Zoschke owned and held an undivided three-fourths interest in this property; the other one-fourth interest in such property being owned and held by his brother, Andrew W. Zoschke who, as an insane person, was and is confined as an inmate of the Toledo State Hospital. As to this, it appears that on April 10, 1929, Albert E. Zoschke, above named, was appointed guardian of Andrew W. Zoschke. Thereafter, on November 5, 1936, Albert E. Zoschke, as guardian of Andrew W. Zoschke, filed a petition in the Probate Court of Ottawa County, Ohio, for authority to sell his ward's interest in the larger tract of land, above referred to, which includes that hereinabove described. Upon this petition a summons was issued which was duly served on Andrew W. Zoschke, as a party defendant in said case, and on C. O. Fordyce, Superintendent of Toledo State Hospital, where said ward was confined. Thereafter, on January 27, 1937, Albert E. Zoschke, as guardian of Andrew W. Zoschke, acting pursuant to an order of said court confirming the sale of Andrew W. Zoschke's undivided one-fourth interest in this property to Walter H. Zoschke, executed a guardian's deed in the usual form in and by which he conveyed to Walter H. Zoschke his ward's interest in and to this property.

Inasmuch as it appears that summons in this proceeding was served upon Andrew W. Zoschke in the manner required by law, subsequent irregularities in this proceeding, if any, could not be asserted collaterally as against the title to the ward's interest in this land which Walter H. Zoschke obtained in and by the guardian's deed above noted and still less could any such irregularities be asserted against the title which the state will obtain by the deed executed to it by Walter H. Zoschke. *Johnson vs. Pomeroy*, 31 O. S. 247. However, I note that there is nothing in the abstract of this proceeding or elsewhere in the abstract of title which

indicates the marital status of Andrew W. Zoschke. If he had a wife living at the time of this proceeding it was necessary under the statute to make such spouse a party defendant in the case and in default of her appearance as a party defendant in the case she would still have her inchoate dower right in Andrew W. Zoschke's undivided one-fourth interest in this property. Before closing the transaction for the purchase of this property you should, therefore, ascertain whether said insane ward, Andrew W. Zoschke, has a wife now living; and, if so, you should secure from her a quit claim deed conveying her interest in this property to the state. It is altogether improbable that Andrew W. Zoeschke is married. Inasmuch, however, as this fact does not appear from the abstract, the possibility of his having such wife is here noted as a matter which should receive your attention.

2. On March 27, 1931, Walter H. Zoschke, George A. Zoschke and Albert E. Zoschke, three of the four brothers who owned and held the fee simple title to the above described and other real property devised to them by their mother, Mary I. Zoschke, executed a deed in and by which they granted to the State of Ohio an easement covering on and over an eighty-foot strip of land which was referred to in said deed as containing "1.42 acres more or less, of which the present road occupies 0.50 acres more or less."

Later, under date of July 12, 1934, Walter H. Zoschke, who then owned and held a three-fourths interest in the tract of land here in question and in the larger tract of land of which the same is a part, executed a deed to the State of Ohio in and by which he granted to the state an easement in a thirty-foot strip of land which was referred to in said deed as containing ".014 acres, more or less, of which the present road occupies .002 acres, more or less." You are doubtless familiar with these easements and with any road construction work that has been done by the State Highway Department under the same and the same are here noted for the reason that in point of law they are or may be encumbrances upon the tract of land here in question.

3. At the time of the certification of this abstract under date of October 16, 1936, the taxes for the year 1936 on this property and on the larger tract of which the same is a part were unpaid and were a lien upon this property. The amount of these taxes was undetermined at that time and if the same have not since been paid they are still a lien upon this property. This, of course, is a matter that should be determined by you before closing the transaction for the purchase of the property.

The warranty deed which has been tendered to the state by Walter H. Zoschke has been properly executed and acknowledged by him and by his wife, Mabel Zoschke, and the form of this deed is such that the same is legally sufficient to convey this property to the State of Ohio by

full fee simple title free and clear of the dower interest of Mabel Zoschke with a covenant of warranty that the title to this property is free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 192 has been properly executed as the certificate required by the provisions of Section 2288-1, General Code, and the same shows a sufficient balance, otherwise unencumbered, to pay the purchase price of the property here in question, which purchase price is the sum of \$1050.00. It is noted that the contract encumbrance record has not been signed by the Director of Public Works and to obviate any question with respect to the authority of the Auditor of State to issue his warrant covering the purchase price of this property, it is suggested in view of the provisions of Section 154-40, General Code, that the signature of the Director of Public Works to this contract encumbrance record be secured before the same, together with the other files, is submitted to the Auditor of State for warrant covering the purchase price of the property.

As a part of the files relating to the purchase of this property you have submitted to me a copy of a certificate over the signature of the President of the Controlling Board showing that the purchase of this property has been approved by said Board and that the money necessary to pay the purchase price of this and other properties needed in connection with the Camp Perry extension project has been released by said Board for this purpose. Subject only to the exceptions above noted, I am approving the title of Walter H. Zoschke in and to the above described tract of land. I am likewise approving the warranty deed submitted to me and likewise, with the exception above noted, contract encumbrance record No. 192; and these and the other files submitted are herewith returned to you for your further action in the premises.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General*