

as the State of Ohio may hereafter by legislative enactment or otherwise, find proper and convenient. It is further provided in said act that all leases heretofore granted to any person, firm or corporation, shall be annulled as soon as the same can be done legally, but that no such lease shall be annulled prior to January 1, 1929. Carrying out the purpose and intent of said act, it is therein further provided that as soon as practicable, the Director of Highways shall cause surveys to be made of the canal property abandoned by said act, together with maps and plats of the same, and of all lands used in connection with that portion of the Miami and Erie Canal abandoned by the act, belonging to the State of Ohio. And the Director of Highways is further directed to make a plat or plan showing the highway, its length, grades and width of so much of the canal property as may be used for highway purposes, as well as of all other lands adjacent thereto that may be leased for other purposes. This act makes express provision for the lease of all lands shown on said plat, adjacent to said highway, that will not be used for highway purposes.

You do not state in your communication whether the canal lands therein referred to and above described, are included in the plat of the Director of Highways of the highway to be constructed in and over canal lands abandoned by said act. For want of information with respect to said tracts, I am unable to express any opinion with respect to the question submitted in your communication, as to whether a lease can now be granted to the Harding-Jones Paper Company, for the particular parcel of canal land here in question, and no opinion is expressed upon this point.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1835.

APPROVAL, ABSTRACT OF TITLE TO LAND OF H. C. FEYLER IN NILE
TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, May 8, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Ohio State University, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication submitting for my examination and approval an abstract of title, warranty deed, encumbrance estimate No. 124, controlling board certificate and other files relating to the proposed purchase of a certain tract of sixty-seven acres of land owned of record by one H. C. Feyler in Nile Township, Scioto County, Ohio, which tract of land is more specifically described as follows:

“Beginning at the southeast corner of said Lot No. 12 at a stone marked “E” and three hickories in the line of Surveys Nos. 15834 and 15878; thence with one line thereof N. 85 poles to a stake in the east line of said Lot No. 12; thence W. 310 poles to a stake in the west line of said Lot No. 12 and at the southwest corner of a one hundred and twenty acre tract sold to Nate Iddings; thence S. 85 poles to a stone marked “D” and a hickory corner to Lot No. 15; thence East with the south line of said Lot No. 12, 310 poles to the place of beginning. Containing one hundred and sixty-four acres of land, more or less.

The said east half containing eighty-two acres, more or less; but excepting therefrom the east fifteen acres thereof. The tract herein conveyed containing sixty-seven acres, more or less.

Being the same premises conveyed to H. C. Feyler by Isaac N. Brown, et al. by Sheriff's Deed dated March 11, 1925, and recorded in Deed Book No. 161, page 188, Scioto County, Ohio, Record of Deeds."

An examination of the abstract of title submitted, which is certified by the abstracter under date of January 10, 1930, shows that said H. C. Feyler has a good merchantable fee simple title to the above described tract of land, free and clear of all encumbrances except the undetermined taxes for the year 1930. Inasmuch, however, as the warranty deed of Mr. Feyler was tendered to the authorized agents and representatives of the State of Ohio on or about February 3, 1930, long prior to the time the taxes for the year 1930 became a lien on said premises, I am inclined to the view that as to such taxes the property here in question should, upon the purchase of this property, be placed upon the tax exempt list of the county.

As a further exception to the title of H. C. Feyler to the property here under investigation, in the abstract submitted it is noted that under date of May 6, 1904, one George W. Stewart, being then the owner of a tract of land, including the premises here under investigation, executed a mortgage on said tract of land to one V. J. Reinke to secure the payment of a note in the sum of \$1,500.00, due and payable five years from the date of said mortgage, to-wit, on May 6, 1909.

Section 8546-2, General Code, as enacted by an act of the 86th General Assembly, passed March 27, 1925, provided that the record of any mortgage which remains unsatisfied or unreleased or record for more than twenty-one years after the last due date of the principal sum or any part thereof, secured thereby, as shown in the record of such mortgage, shall not be deemed to give notice to or to put on inquiry any person dealing with the land described in such mortgage that such mortgage debt remains or has been extended or renewed. It will be noted in the application of the statutory provisions above noted to the mortgage here in question that according to the terms of said mortgage the lien of the same did not determine until May 6, 1930, and then only, it may be added, if the mortgagee or someone rightfully claiming under him, did not refile said mortgage or a copy thereof in the Recorder's Office for the purpose of securing an extension of said lien.

The mortgage above referred to carries on its face some evidence of being fictitious and not in good faith for the purpose of securing a bona fide indebtedness in the amount of the note referred to in the mortgage. However, I am not permitted to make any assumptions of fact in a matter of this kind, and before the transaction relating to the purchase of this property is closed, you should have some evidence of the fact that the mortgage above referred to was not refiled for record, and that no proceedings have been instituted to effect a foreclosure of the same.

An examination of the warranty deed tendered by said H. C. Feyler shows that the same has been properly signed and acknowledged by said grantor and by his wife Katherine N. Feyler, and that said deed is as to form sufficient to convey the above described property to the State of Ohio by fee simple title, free and clear of the inchoate right of dower of said Katherine M. Feyler, and free and clear of all encumbrances whatsoever.

An examination of encumbrance estimate No. 124 shows that the same has been properly executed and that there are sufficient balances in the proper appropriation account to pay the purchase price of said property, to-wit, the sum of \$335.00.

From an inspection of the controlling board certificate submitted as a part of the file relating to the purchase of this property it appears that the amount of the purchase price of this property had been released by the controlling board in accordance with the authority conferred upon said board under authority of Section 11 of House Bill No. 510 of the 88th General Assembly.

I am herewith returning with my approval said abstract of title, warranty deed,

encumbrance estimate No. 124, controlling board certificate and other files relating to the above described property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1836.

COUNTY TUBERCULOSIS HOSPITAL—SUPERINTENDENT AND EMPLOYEES WITHIN CIVIL SERVICE.

SYLLABUS:

The superintendent of a county tuberculosis hospital, and the other employees of such hospital, are included in the classified service of the State of Ohio.

COLUMBUS, OHIO, May 9, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which reads as follows:

“We would like to have your opinion on the following question:

‘Must the Superintendent and all employes of the Stark County Tuberculosis Sanatorium be employed under the laws, rules and regulations relating to civil service?’

Our sanatorium was recently opened and to date the only person appointed under the civil service laws was the Superintendent. The trustees have told me that they will not continue to run the institution if it must be subject to the civil service commission of the State of Ohio. They claim that they would materially interfere with the proper operation of the institution.

I understand that the Springfield Lake Sanatorium which is a county sanatorium operated by Summit County is not now, nor has it ever been subject to the civil service laws.

If you have an opinion regarding the above which has already been written, I wish you would mail it to me at once, and if not, we would greatly appreciate your opinion on this question.”

Sections 3139 to 3147, inclusive, of the General Code, provide for the establishing and maintenance of county tuberculosis hospitals.

Section 3141-2, General Code, provides in part as follows:

“* * * The board of trustees so appointed shall have all the powers conferred by law upon the board of trustees of a district hospital for the care of persons suffering from tuberculosis, and all laws applicable to the levy for the erection, maintenance and operation of said district hospital shall apply to the erection, operation and maintenance of said county hospital.”

Section 3150, General Code, provides for the organization of, removal of members from, and the filling of vacancies on the board of trustees of the district tuberculosis hospital. A district tuberculosis hospital is one which is established and maintained by two or more counties, not exceeding ten.