

2961.

DEED—FORMS OF PROPOSED DEEDS BETWEEN STATE OF OHIO AND PENNSYLVANIA, OHIO AND DETROIT RAILROAD COMPANY, APPROVED.

SYLLABUS:

Forms of deeds from the State of Ohio, as grantor, to The Pennsylvania, Ohio and Detroit Railroad Company, as grantee, and from The Pennsylvania, Ohio and Detroit Railroad Company, as grantor, to The State of Ohio, as grantee, respectively, drawn in compliance to the provisions of House Bill No. 380 of the 87th General Assembly, approved.

COLUMBUS, OHIO, December 1, 1928.

HON. VIC DONAHEY, *Governor of Ohio, Columbus, Ohio.*

DEAR GOVERNOR DONAHEY:—You have submitted for my examination and opinion a form of proposed deed in fee simple from the State of Ohio, as grantor, to The Pennsylvania, Ohio and Detroit Railroad Company, as grantee, by virtue of which there is to be conveyed to said grantee the real estate hereinafter referred to, in accordance with the provisions of House Bill No. 380 of the 87th General Assembly (112 v. 116), passed April 11th, 1927, and approved April 18th, 1927, and in consideration of the conveyance in fee simple by said The Pennsylvania, Ohio and Detroit Railroad Company to the State of Ohio of a parcel of land adjoining in part on the east side of the state fair grounds in the City of Columbus, Ohio, and extending from Eleventh Avenue to Seventeenth Avenue. The real estate to be conveyed by the above deed consists of a strip of land sixty (60) feet wide off the west side of the Ohio State Fair Grounds, extending from Eleventh Avenue to Seventeenth Avenue in the City of Columbus and is further described in detail therein. I have compared the description of the real estate as set out in the deed with that set out in House Bill No. 380, and find that the same agrees therewith in all respects.

The deed also contains the following condition and reservation:

“*SUBJECT* to the express condition that so long as the said state fair grounds shall be used by the state of Ohio for fair grounds purposes, any railroad or other structure constructed upon said property by said Railroad Company shall be erected throughout its length upon piers and other supports, in accordance with plans therefor to be approved by the director of agriculture concurrently with the execution and delivery of this deed, said piers and other supports to be so located as readily to permit the use of the surface of the land under the elevated structure: *RESERVING* to the State of Ohio the right to use the surface of the land under such elevated structure or railroad, but without any prejudice to or in any way interfering with the safety of such structure or railroad or the officers, agents or employees of either and without attaching anything whatsoever to such structure or railroad; said use to be for state fair purposes only and to continue so long as the adjacent property is used as a state fair grounds.”

Upon examination of said deed form in the light of the provisions of House Bill No. 380 above referred to, I am of the opinion that the same complies in all respects with the provisions of said House Bill No. 380 and I therefore approve the same.

There has also been submitted to me a warranty deed in fee simple from The Pennsylvania, Ohio and Detroit Railroad Company, as grantor, to the State of Ohio, as grantee, by virtue of which there is to be conveyed to the State of Ohio certain real estate hereinafter referred to, in accordance with the provisions of House Bill No. 380 of the 87th General Assembly, heretofore referred to and in consideration of the conveyance in fee simple by the State of Ohio to The Pennsylvania, Ohio and Detroit Railroad Company of a strip of land sixty feet in width off of the westerly side of the State Fair Grounds in the City of Columbus, Ohio, and extending from Eleventh Avenue to Seventeenth Avenue, which is the real estate described in the deed first above considered wherein the State of Ohio is grantor and The Pennsylvania, Ohio and Detroit Railroad Company is grantee.

The real estate described in said deed consists of three parcels, denominated parcels "A", "B" and "C", containing in all 7.34 acres more or less, adjoining the Ohio State Fair Grounds on the east and is further described in detail therein. The deed specifically excepts from said parcels "A", "B" and "C" all railroad tracks. I have compared the description of the real estate as set out in said deed with that set out in House Bill No. 380, and find that the same agrees therewith in all respects.

The deed is executed and acknowledged on the part of The Pennsylvania, Ohio and Detroit Railroad Company by Geo. J. Adams, its Vice-President and J. Tancy Willcox, its Assistant Secretary. No evidence of the authority of the officers named to execute the deed on behalf of the railroad company has been furnished and I would suggest that before said deed is accepted such evidence be obtained.

The deed is accompanied by an instrument executed on behalf of The Pennsylvania Railroad Company, Lessee of The Pennsylvania, Ohio and Detroit Railroad by Thomas W. Hulme, its Vice-President, and Lewis Neilson, its Secretary, wherein said The Pennsylvania Railroad Company consents and agrees to the conveyance of the premises described in said deed and remises, releases and forever quitclaims the same to the State of Ohio, its successors and assigns. No evidence of the authority of the officers above named to execute this instrument on behalf of The Pennsylvania Railroad Company has been furnished, and I would suggest that the same be required by you.

With the exception of the matters above referred to, to be required by you, I am of the opinion that said deed is in proper legal form and properly executed and I therefore approve the same.

It must be understood, however, that although the deed from The Pennsylvania, Ohio and Detroit Railroad Company to the State of Ohio purports to convey a fee simple title as required by House Bill No. 380, no abstract of title to the real estate described therein has been furnished and no opinion on said title can therefore be rendered at this time. The real estate is a part of the main line of the railroad and is undoubtedly encumbered by bond mortgages or trust indentures to secure issues of bonds. In fact I have been informed that there are at least two of such mortgages in existence at the present time, both of which were executed by the predecessor in title of the present owner.

I am returning the form of deed from the State of Ohio to The Pennsylvania, Ohio and Detroit Railroad Company to you herewith. The deed from said railroad company to the State of Ohio is being returned to the local representatives of said company to be delivered to you when the deed from the state shall have been executed by you and you are ready to make delivery thereof.

Respectfully,
EDWARD C. TURNER,
Attorney General.