

January 19th, and reported in the issue of January 29th of the Ohio Bar, it was held as disclosed by the third branch of the syllabus:

"Neither fraud, nor conspiracy, nor unreasonable profits, are necessary elements of a cause of action for recovery of money from an officer of a city or village, under the provisions of Section 3808, General Code."

It is believed that this case is also to be distinguished from the holdings based upon the Fronizer case, for the reason that in the Wright case there was no lawful authority for such a party, as was considered therein, to enter into a contract with the municipality, and therefore the same was void from the beginning.

You are therefore advised that, in the event such a payment as you describe, is made, it will be the duty of your Bureau to make a finding for recovery, and the same may be recovered from the party receiving the same.

Respectfully,

GILBERT BETTMAN,
Attorney General.

720.

DISAPPROVAL, DEEDS TO LAND OF GREENVILLE HISTORICAL SOCIETY AND KATHERINE H. SCHLECHTY AT FORT JEFFERSON, DARKE COUNTY, OHIO.

COLUMBUS, OHIO, August 8, 1929.

HON. HARRY D. SILVER, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—You recently submitted to me a communication under date of July 25, 1929, received by you from F. E. Wilson, enclosing two warranty deeds executed respectively by the Greenville Historical Society and by one Katherine H. Schlechty, conveying to the State of Ohio certain lots and parcels of land in Neave Township, Darke County, Ohio. By the deed of the Greenville Historical Society there is conveyed to the State a tract of 3.349 acres of land in said township and county, located in the southeast quarter of Section 28, Township 11 North, Range 2 East. By the deed of said Katherine H. Schlechty, there is conveyed to the State lots 44, 45, 46 and 47 in the original town plat of Fort Jefferson in said township and county, and also a small tract of land containing .142 acres.

The transactions relating to the acquisition of the above described parcels of land are had pursuant to the authority of House Bill No. 143, passed by the 88th General Assembly, April 5, 1929, approved by the Governor, April 25, 1929, and which went into effect July 25, 1929. This act provides as follows:

"Section 1. That for the purpose of acquiring and improving the site of Fort Jefferson in Darke County, Ohio, on which was erected a military post by General Arthur St. Clair in his campaign against the Indians in 1791, and adjacent lands not to exceed eight acres, there is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund, not otherwise appropriated, the sum of three thousand dollars, which the

Greenville Historical Society is hereby authorized to draw upon for the purpose named.

Section 2. Upon the completion of acquiring and improving said site and lands, the Greenville Historical Society shall convey the same to the State of Ohio, whereupon the care and control of said site and lands shall be vested in the board of trustees of the Ohio State Archaeological and Historical Society, who shall hold the same and the property thereon subject to such use as the General Assembly may by law direct."

It is quite clear from the provisions of said act that the same contemplates that the Greenville Historical Society shall acquire the lands necessary for the establishment of the site of Fort Jefferson as a park, pay for the same out of the appropriation made in said act for the purpose, and then convey the same to the State of Ohio. There being no authority conferred by this act upon the State or upon any officer or department thereof to purchase this property direct from the owner and pay for the same out of this appropriation, the deed of said Katherine H. Schlechty to the State of Ohio is, for this reason, disapproved with the suggestion that Mrs. Schlechty execute a deed for this property to the Greenville Historical Society and receive her pay therefor out of said appropriation made for the use of said society. The Greenville Historical Society should then execute to the State of Ohio a deed for the property described in the Schlechty deed.

The deed of the Greenville Historical Society to the State of Ohio conveying the 3.349 acres of land above referred to is for the stated consideration of one dollar and other valuable considerations. Inasmuch as it may be assumed that this deed is really one to the State without consideration as contemplated by the provisions of said act, no exception can perhaps be taken to the form in which the consideration for this deed is stated. Of course, if there is a real substantial consideration to be paid by the State of Ohio to the Greenville Historical Society for this property, the actual amount of the consideration should be stated in the deed.

It is noted that in the granting clause of said deed, the property therein described is sold and conveyed to the State of Ohio "with the care and control of said lands and lots vested in the board of trustees of the Ohio State Archaeological and Historical Society." Ordinarily a qualification or limitation of this kind in a deed to the State of Ohio would be objectionable, but in view of the fact that the act above quoted expressly provided that the care and control of said site and land shall be vested in the board of trustees of the Ohio State Archaeological and Historical Society, and in view of the fact that the above quoted qualification with respect to the control of said lands is not effective to convey said lands as an estate upon condition subsequent or as a conditional limitation, I do not see that there is any substantial objection to this deed by reason of the quoted qualification in the granting clause of said deed. Said deed has been executed by the Greenville Historical Society and has been acknowledged by its president and secretary in substantial conformity to law; and said deed is in form sufficient to convey to the State of Ohio a fee simple title to said land free and clear of all encumbrances whatsoever.

In passing upon the deeds above mentioned which were enclosed with the communication of Mr. F. E. Wilson to you, I am not, of course, passing upon the title of the property covered by said deeds, this for the reason that no abstract or other sufficient statement as to the title of this property has been submitted with said deeds. Inasmuch as the property necessary for the acquisition of the site of Fort Jefferson is to be paid for out of funds of the State of Ohio appropriated for the purpose by said House Bill No. 143, I am of the opinion that no moneys should be paid out of said appropriation in the acquisition of said lands without the submission of an abstract of title or some statement of title equivalent thereto by an examination of

which I can arrive at some conclusion as to the sufficiency of the title of the record owners of said lands.

I am herewith enclosing said warranty deeds and a plat of Fort Jefferson State Park.

Respectfully,
GILBERT BETTMAN,
Attorney General.

721.

TAX AND TAXATION—GASOLINE TAX—TOWNSHIP'S SHARE UNDER SECTION 5541-8, GENERAL CODE, NOT TO BE USED FOR MAINTAINING AND REPAIRING IMPROVED TOWNSHIP ROADS.

SYLLABUS:

Funds appropriated and apportioned to the several townships within the state, under the provisions of Section 5541-8, as amended by the 88th General Assembly, may not be used by such townships for the purpose of maintaining and repairing improved township roads.

COLUMBUS, OHIO, August 9, 1929.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Quoting from Section 5541-8, General Code, as enacted by the 88th General Assembly:

‘Provided, however, that such funds shall be used by the township trustees for the purpose of constructing, widening, and reconstructing unimproved dirt roads of the secondary or county system of highways within the township.’

There are no unimproved roads in Mercer County coming within the provisions of this clause. Quoting again:

‘In which event such funds may be used for constructing, widening and reconstructing such township roads as the township trustees shall designate.’

Again, there are townships in Mercer County having no unimproved roads which come within this clause worthy of improvement. In other words, there are unimproved roads coming under this latter provision which are virtually abandoned, ought to be abandoned, and probably will be abandoned, in which case it will be very unpopular for the trustees to spend money just because they had it to spend on such roads. The other township roads, which are improved and come within the last clause aforementioned, if reconstructed or widened would also be unpopular because it would be merely spending money foolishly because the trustees had it to spend.

Therefore, my question is, where townships have no secondary or county system of highways within the township, and where it would be unwise and a foolish expenditure of money to improve unimproved roads in the townships which are virtually abandoned, and where the other township roads which are improved do not require widening or reconstructing, can the trustees of such townships use their share of their gas fund for maintenance and repair of improved township roads?”