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APPROVAL—ABSTRACT OF TITLE, ETC., TO LAND IN WAPAKONETA, OHIO—ROBERT W. REA.

COLUMBUS, OHIO, November 28, 1936.

HON. JOHN JASTER, JR., *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your communication under date of November 20, 1936, with which you enclose abstract of title, warranty deed and other files relating to the proposed purchase by the State of Ohio of a tract of land comprising parts of Lots 2, 3 and 4 of Wild's Subdivision in the city of Wapakoneta, Ohio, the title to which tract of land was the subject of consideration in Opinion No. 6041 directed to you under date of September 8, 1936. In this opinion, I find that Robert W. Rea, the owner of record of the property under investigation, had an indefeasible fee simple title to this property, and that he owned and held the same free and clear of all encumbrances except the taxes on the property for the last half of the year 1935 and the undetermined taxes on the property for the year 1936 and except, further, such right of way and easement rights as may be owned and held by the Central Ohio Light and Power Company under a deed executed to said company under date of December 1, 1930, by Western Ohio Railway and Power Corporation by which, apparently, a right of way for electric transmission lines, substations and other electric purposes was granted to said the Central Ohio Light and Power Company. The additional information which has been furnished to me by the files submitted with your recent communication is not as explicit as might be desired with respect to the nature and extent of the easement of the Central Ohio Light and Power Company as to the particular property here under investigation. It seems quite clear, however, that the easement held by said company extends only to such transmission lines and other property and equipment as were on this and other property of the Western Ohio Railway and Power Corporation at the time of the execution of its easement deed to the Central Ohio Light and Power Company, above referred to, and, as to the property here under investigation, at the time the same was conveyed to Robert W. Rea by sheriff's deed under date of July 25, 1935, pursuant to foreclosure proceedings against the Western Ohio Railway and Power Corporation. It appears from the letter of Anderson and Lusk, who prepared the abstract to this property, that there never was any substation on the property here under investigation and in this situation, I am inclined to the view that the only effective easement now owned and held by the Central Ohio Light and Power

Company as to the property which the state proposes to purchase from Mr. Rea is that to electric transmission lines and other like property for electric purposes, if any, which were on this property at the time Mr. Rea acquired the title to the same in and by the sheriff's deed above referred to. How far, if at all, electric transmission lines or other like property now owned and held by the Central Ohio Light and Power Company in and upon this tract of land will interfere with the use which the state of Ohio, acting through the Department of Highways, expects to make of this land, is a matter to be determined by you before you close the transaction for the purchase of this property by issuing to Mr. Rea your voucher covering the purchase price of this property.

I have examined the warranty deed tendered by Robert W. Rea and find that the same has been properly executed by him and by his wife, Helene Curley Rea, and that the form of this deed is such that the same is legally sufficient to convey this property to the State of Ohio by fee simple title free and clear of the dower right and interest of Helene Curley Rea and with a covenant of warranty that the same is free and clear of all encumbrances subject to the reservation as to the right of way for electric transmission lines and other property for electric purposes, if any, now held by the Central Ohio Light and Power Company in and upon this land.

It appears that since the opinion of this office above referred to was directed to you the taxes on this property for the last half of the year 1935 have been paid and that the only taxes which are now a lien upon the property are the taxes for the year 1936. As to these taxes, I note what is said with respect to the intention of the County Auditor to remove the same from the tax list and duplicate. In this connection, it may be observed that the lien for taxes on real property is the lien of the state itself and that when the state obtains the fee simple title to this property by acceptance of the deed tendered to it by Robert W. Rea, the lien for the taxes on this property will become merged and lost in the larger title by which the state will then own and hold this property. Inasmuch, however, as your department has been in possession of this property for some time, consideration should be given to the thought that it might be proper for your department to see that the taxes for the year 1936 on this property are paid either by Mr. Rea or by your department out of moneys appropriated by the legislature by your department which may be available for the purpose. With these observations, I am returning the abstract of title, warranty deed and other files submitted to me with my approval to the end that proper voucher may be issued by your department covering the purchase price of this property.

Respectfully,

JOHN W. BRICKER,
Attorney General.