

by said Ralph Carmany, who is unmarried, has been properly executed and acknowledged by him. It further appears from an examination of the deed and of its terms and provisions that said deed is legally sufficient to convey this tract of land, together with the appurtenances thereof, to the state by fee simple title with a covenant of warranty that the property is free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 19 has been properly executed and the same shows a balance in the appropriation account to the credit of your department for the purchase of this and of other lands in connection with the Nimisila Creek Basin Reservoir Project which is unencumbered for other purposes and which is sufficient in amount to pay the purchase price of this parcel of land, which purchase price is the sum of \$600.00.

It likewise appears by way of recital in this contract encumbrance record, as well as from other information at hand, that the purchase of this property has been approved by the Controlling Board and that the money necessary to pay the purchase price thereof has been released for this purpose by said Board.

Subject only to the exception above noted, I am hereby approving the title of Ralph Carmany in and to the parcel of land here in question; and I am likewise approving said warranty deed, contract encumbrance record No. 19 and other files relating to the purchase of this property, all of which, together with the certificate of title, are herewith returned to you for your further action in closing the transaction for the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

350.

APPROVAL—WARRANTY DEED, CERTIFICATE OF TITLE,
ETC. OF J. H. SNEDEKER RELATING TO LAND IN GREEN
TOWNSHIP, SUMMIT COUNTY, OHIO, FOR THE NIMI-
SILA CREEK BASIN RESERVOIR PROJECT.

COLUMBUS, OHIO, March 30, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus,
Ohio.*

DEAR SIR: You recently submitted for my examination and approval

certificate of title No. 56,853 executed by The Northern Ohio Guarantee Title Company of Akron, Ohio, under date of February 27, 1937, warranty deed, contract encumbrance record No. 21 and other files relating to the proposed purchase of a certain lot and tract of land owned of record by one J. H. Snedeker in Green Township, Summit County, Ohio, which your department is acquiring for and in the name of the State of Ohio in connection with the Nimisila Creek Basin Reservoir Project.

This parcel of land is more particularly described as being Lot No. Ten (10) in C. C. McCue's Little Farms in the west half of the northwest quarter of Section 19 in said township as surveyed by S. G. Swiger and Son and recorded in Plat Book 36, page 7, Summit County Records. This lot is subject to all legal highways and there is excepted and reserved therefrom that part of the lands thereof heretofore conveyed to The Canton, Massillon and Akron Railroad Company by deed dated August 14, 1901, and recorded in Vol. 273, page 613, of Summit County Records.

Upon examination of the certificate of title submitted to me, I find that said J. H. Snedeker has a good and indefeasible fee simple title to the above described lot and parcel of land, subject to the exceptions and reservations above noted, and that he owns and holds this property free and clear of all encumbrances except those hereinafter noted as exceptions to this title.

In the description of Lot No. 10 in C. C. McCue's Little Farms Allotment, as the same is set out in the certificate of title and in the deed above referred to, there is excepted and reserved therefrom a certain right of The Canton, Massillon and Akron Railroad Company extending through said property. From the certificate of title it appears that the tract of land now included in Lot No. 10 in C. C. McCue's Little Farms Allotment above described was formerly owned by Charles A. Smith as a part of a larger tract of eighty-two acres, more or less, then owned by him; and that on August 14, 1901, he, together with his wife, Matilda Smith, executed a warranty deed in and by which he granted and conveyed to The Canton, Massillon and Akron Railroad Company by apparent fee simple title a strip of land sixty feet wide extending in a northerly and southerly direction through said eighty-two-acre tract of land and through the smaller tract which is now Lot No. 10 in C. C. McCue's Little Farms Allotment. By information which comes to me otherwise than from this certificate of title, I am advised that this sixty-foot strip of land which has been excepted from the tract above described is now owned and held by The East Ohio Gas Company and that arrangements are to be made whereby the state is to acquire the interest of The East Ohio Gas Company in this strip of land extending

as it does now throughout the whole length of the C. C. McCue's Little Farms Allotment.

Exceptions which I have noted to the title of J. H. Snedeker in and to the above described tract of land are as follows:

1. On March 16, 1906, Charles A. Smith, then the owner of the above described and other lands included within what is now the C. C. McCue's Little Farms Allotment, executed an instrument in deed form in and by which he conveyed to one Charles E. Wise an easement for the erection of a telephone line, together with the necessary poles, wires and other equipment, which was to be erected along the highway on the westerly line of the grantor's premises and along the easterly side of said highway. I am not advised by the certificate of title or otherwise as to what, if anything, was done by said Charles E. Wise or by his successors in interest under this easement with respect to the construction of a telephone line or otherwise. You or your engineers and agents in charge of the construction of this project are doubtless advised of this easement and of any telephone line construction pursuant to the same.

2. On November 13, 1908, said C. A. Smith, being the owner of the eighty-two-acre tract of land above referred to, executed an instrument in and by which he conveyed to The Tide Water Pipe Company, Limited, a right of way for the construction and maintenance of pipe lines and of a telegraph line over and through said lands. There is nothing in the certificate of title to indicate how the particular tract of land here in question and above described is affected by this easement or by any pipe line or telegraph line which may have been constructed pursuant to the same. With respect to this matter as with respect to that above noted, you and your designated engineers and agents in charge of this project are doubtless advised as to the situation in connection with the easement here referred to.

3. It further appears from the certificate of title that on August 16, 1928, C. Clifton McCue and Augusta M. McCue, his wife, executed an oil and gas lease to The East Ohio Gas Company, which lease covered lands thereafter included in the lot above described and other lots in McCue's Little Farms Addition. Some time later The East Ohio Gas Company executed a partial release of its rights under this lease instrument and thereby released from the operation of its lease the lot and parcel of land above described on the condition that "no drilling for oil or gas shall be done on the said premises herein released during the life of said above described oil and gas lease."

I am not advised as to whether any operations were conducted for oil or gas upon this particular lot or parcel of land, although it may be reasonably assumed that C. Clifton McCue and his successors in title lived up to the terms and conditions of the release above referred to, and

that no drilling for oil or gas has been done on this property. However, this is a matter of which you or your engineers and representatives in charge of this project have full information and this matter is here noted simply for the reason that in legal contemplation there is a possibility that this oil and gas lease may be an encumbrance on the land.

4. In the certificate of title it appears that there is an assessment upon this lot for the improvement of South Main Street, which assessment was levied some time prior to December 20, 1926, and which was made payable in twenty semi-annual installments of \$10.40 each, beginning December 20, 1926. With respect to the installments of this assessment which became due and payable in years prior to the year 1936, the following is stated in the certificate of title:

“Delinquent assessments of former years, amounting to \$89.44, are a lien.

Assessments for the first half of 1935, amounting to \$10.40, are delinquent; penalty \$1.04.

Assessments for the last half of 1935, amounting to \$10.40, are delinquent; penalty \$1.04.”

Nothing is stated in the certificate of title with respect to the 1936 installments. In this connection, it may be observed, however, that the total amount of the assessment upon this property, amounting to the sum of \$208.00 less the amount of assessment installments paid thereon, is a lien upon the property as is the amount of unpaid penalties on delinquent assessments.

5. It appears further from the certificate of title that the taxes on this property for the last half of the year 1935, amounting to the sum of \$2.27, are delinquent and that this sum, together with a penalty thereon in the amount of \$.23, is a lien upon the property. The taxes for the year 1936, the amount of which is not stated in this certificate, are likewise a lien upon this property.

Needless to say, these taxes and the amount remaining unpaid upon the assessment referred to in exception No. 5 above referred to, together with unpaid penalties thereon, should be paid by the grantor, J. H. Snedeker, before the purchase of this property is consummated by the issuance of voucher and warrant covering the purchase price of the property.

Upon examination of the warranty deed tendered by J. H. Snedeker, I find that the same has been properly executed and acknowledged by said grantor and by Zelma Snedeker, his wife. I further find 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 interest of Zelma Snedeker in and to this property with a covenant of warranty on the part of said grantor that the property is conveyed to the State of Ohio free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 21, which has been submitted as a part of the files relating to the purchase of this property, is properly executed and the same shows a sufficient balance in the appropriation account to the credit of your department for the purchase of lands required for the Nimisila Creek Basin Reservoir Project, otherwise unencumbered, to pay the purchase price of this property, which purchase price is the sum of \$1325.00.

It likewise appears by way of recital in this contract encumbrance record, as well as from other information at hand, that the Controlling Board has approved the purchase of this property and has released from the appropriation account the money necessary to pay the purchase price of this and of other property acquired or to be acquired by your department in connection with said project.

Subject only to the exceptions above noted, I am approving the title of J. H. Snedeker in and to this property. I am likewise approving said warranty deed, contract encumbrance record No. 21 and other files relating to the purchase of this property, which, together with the certificate of title, are herewith enclosed for your further action in consummating the purchase of this property.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

351.

DISCUSSION OF THE STATUS OF TITLE OF CERTAIN
LANDS ABANDONED TRACTION RIGHT OF WAY LANDS
IN MADISON COUNTY, OHIO, AND DESCRIBED BY
TWELVE DEEDS SUBMITTED FOR THE PURPOSE OF
THIS DISCUSSION.

COLUMBUS, OHIO, March 30, 1937.

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

DEAR SIR: You have submitted to me twelve deeds with request for and examination of the title to the lands described in said deeds and an opinion as to its availability for highway purposes, the party or