

2393.

STATUS—ABSTRACTS OF TITLE AND OTHER INSTRUMENTS, PROPOSED PURCHASE, STATE OF OHIO, THROUGH ADJUTANT GENERAL. USE, DEPARTMENT OF PROPERTY, GRANTOR, THE TOLEDO TRUST COMPANY, TOLEDO, OHIO, CONSIDERATION \$75,000.00.

COLUMBUS, OHIO, April 29, 1938.

HON. EMIL F. MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval, ten abstracts of title, a warranty deed and contract encumbrance record No. 9, all of which relate to the proposed purchase by the State of Ohio for the use of your department of property which is owned of record by The Toledo Trust Company, Toledo, Ohio.

This real estate, which is located in the City of Toledo, Lucas County, Ohio, is more particularly described as follows:

Lots Thirty-one (31) to Forty (40), inclusive, all in West-lake Addition to the City of Toledo, Lucas County, Ohio, situate in the northeast quarter of Section Twenty-seven (27), Town Nine (9) South, Range Seven (7) East.

The Owens Bottle Machine Company acquired title to these ten lots during 1915 and the early part of 1916 from the then holders of good record title to the individual lots.

By an amendment to its articles of incorporation passed on April 14, 1919, the name of The Owens Bottle Machine Company was changed to The Owens Bottle Company; and on April 17, 1929, the name of The Owens Bottle Company was changed to The Owens-Illinois Glass Company. There has never been any conveyance of this property from the corporation under its former names to the corporation under its present name. However, the corporation records show that the changes in name were effected by amendments to the original charter so that in substance the corporation which acquired these lots is identical with the one which originally acquired the property. The absence of such conveyances in no way impairs the title of the original corporation under its new name.

By a warranty deed properly executed and dated November 1, 1935, The Owens-Illinois Glass Company conveyed, among other parcels, the property hereinbefore described to The Toledo Trust Company. This conveyance was in accord with the terms of a trust agreement which was entered into by The Owens-Illinois Glass Company, The Boody Building

Company and the Toledo Trust Company, as trustee. The Boody Building Company was wholly owned by The Ohio Savings Bank which is now in process of liquidation under the supervision of the State Superintendent of Banks.

The purpose of this trust agreement is to provide mutual protection in the carrying out of the provisions of a lease of certain property on the part of The Owens-Illinois Glass Company, as lessee, and The Boody Building Company, as lessor.

Article III, paragraph 3 of the trust agreement provides for the substitution of the various items comprising the corpus of the trust of which the parcel of real estate in question was a part. The Superintendent of Banks, by virtue of the liquidation proceedings, became the representative of the equitable interest created and vested in The Boody Building Company by the trust agreement.

The State of Ohio applied through the Superintendent of Banks for the purchase of the property in question. On January 7, 1938, the Superintendent of Banks was empowered by a court order issued by the Common Pleas Court of Lucas County to act with respect to the proposed substitution of these items comprising in part the corpus of the trust. On January 24, 1938, a letter of authorization was executed by W. M. Konzen, deputy of the Superintendent of Banks, H. G. Phillips, vice president of the Owens-Illinois Glass Company, and Guy B. Roberts, president of The Boody Building Company, directing The Toledo Trust Company to release the property hereinbefore described and to accept in substitution therefor six hundred and fifty shares of The Owens-Illinois Glass Company stock.

Subsequently, The Toledo Trust Company has executed a warranty deed to convey the property as hereinbefore described to the State of Ohio in consideration of \$75,000.00.

The validity of this warranty deed executed by the Trust Company rests on the proper exercise of the power of attorney to convey property which the company held as trustee. In my opinion that exercise of this power of attorney was properly authorized by the parties to the agreement in their letter of authorization dated January 24, 1938, which approved the substitution of the six hundred and fifty shares of Owens-Illinois Glass Company stock for the property in question in accord with the provisions of Article III, paragraph 3 of the trust agreement. The substitution described therein has been effectuated. The Trust Company was thereby empowered to convey this property.

As we have seen, the Toledo Trust Company acquired title to this property through a warranty deed duly executed by The Owens-Illinois Glass Company. Both this warranty deed and the warranty deed which was subsequently executed by The Toledo Trust Company are proper in

form and sufficient to convey successively the whole interest of these respective parties in the property.

In my opinion, the interest which is thus conveyed to the State of Ohio is an indefeasible fee simple in the property hereinbefore described, encumbered only by a lien in the amount of unpaid taxes for the years 1937 and 1938. The amount of such unpaid taxes is unknown to me.

The letter of authorization executed by the parties to the trust agreement, including the legal representative of the beneficiary of the trust, serves as an effective means of eliminating the outstanding equitable interest which The Boody Building Company held under the trust agreement with respect to this property.

Upon examination of contract encumbrance record No. 9, I find that the same has been properly executed and that there is shown therein a sufficient unencumbered balance to the credit of your department for the purchase of the property in question, the purchase price of which is \$75,000.00.

Except for the lien securing the unpaid taxes referred to, the title of The Toledo Trust Company to the property herein described meets with my approval, as does likewise the warranty deed and the contract encumbrance record submitted to me.

I am herewith enclosing the certificates of title, the warranty deed and the contract encumbrance record.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2394.

APPROVAL—REVISED FORM OF AGREEMENT, STATE OF OHIO, THROUGH DIRECTOR OF HIGHWAYS, WITH THE PENNSYLVANIA RAILROAD COMPANY, DRAINAGE, ALONG RAILROAD TRACKS, MILFORD, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, May 3, 1938.

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

DEAR SIR: You have submitted for my consideration a revised form of agreement by and between the State of Ohio and the Pennsylvania Railroad Company, the original form of which was submitted to me and