

authorizing it to sell this property to the State of Ohio by proper proceedings to this end, to be filed in the Common Pleas Court of Franklin County, Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1953.

APPROVAL, ABSTRACT OF TITLE TO LAND OF THE VOLUNTEERS OF
AMERICA IN COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 6, 1930.

State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval an abstract of title of a certain tract of land situated in the City of Columbus, Franklin County, Ohio, and more particularly described as being a part of inlot number one hundred and twelve (112) in the City of Columbus, Ohio, as the same is numbered and delineated upon the recorded plat thereof, of record in deed book "F," page 332, Recorder's Office, Franklin County, Ohio, which part of said inlot is more particularly described as follows:

"Beginning at a point at the northwest corner of said Inlot No. 112; thence in a southerly direction along the west line of said lot a distance of 31.15 feet to a point; thence in an easterly direction and parallel to the north line of said lot, 45.40 feet to a point; thence in a northerly direction and parallel to the east line of said lot 12.30 feet to a point; thence in an easterly direction and parallel to the north line of said lot 16.70 feet to a point; thence in a northerly direction and parallel to the east line of said lot 17.40 feet to the north line of said lot; thence in a westerly direction along the said north line 52.63 feet to the place of beginning."

Without tracing or otherwise discussing the early history of the title of the premises here under investigation, it is sufficient to note that on December 7, 1914, said inlot 112, including the premises here under investigation, together with inlot 113, was owned of record by one Christian F. Jaeger in fee simple title. On said date Christian F. Jaeger leased said inlot 113, together with the adjoining premises here in question out of inlot 112, to The Volunteers of America for a term of five (5) years, beginning January 1, 1915, with a privilege of renewal for an additional period of five (5) years. This lease granted to the lessee the right and option to purchase the premises leased, for the sum of thirty-two thousand five hundred dollars (\$32,500.00). Some time later, to-wit, February 10, 1920, said Christian F. Jaeger, being the owner of record of inlots 112 and 113, conveyed the same by warranty deed, in which his wife joined, to Fred S. Spring and H. W. Acker, subject to the terms of the above mentioned lease to The Volunteers of America.

On November 14, 1925, Fred S. Spring, then a widower, and H. W. Acker and Florence R. Acker, his wife, joined in a warranty deed by which they conveyed to The Columbus Federation of Women's Clubs said inlot 112, which, of course, included the premises hereunder investigation. This conveyance was likewise made subject to the lease executed by Christian F. Jaeger to The Volunteers of America. Thereafter on January 8, 1924, The Columbus Federation of Women's Clubs executed and delivered to said Fred S. Spring and H. W. Acker a mortgage on inlot 112, including the premises here in question, for the sum of ten thousand dollars (\$10,000.00).

On November 5, 1924, The Volunteers of America, having exercised the option contained in its lease from Christian F. Jaeger to purchase the property therein described, including the premises here under investigation, and having tendered to said Fred S. Spring and H. W. Acker said sum of thirty-two thousand five hundred dollars (\$32,500.00), the agreed purchase price of said property, filed its petition in the Common Pleas Court of Franklin County, Ohio, for a judgment and decree of said court, requiring said Fred S. Spring, H. W. Acker, and other parties defendant in said case to execute and deliver to The Volunteers of America a deed for said property. While this action was pending in the Common Pleas Court of Franklin County, to-wit, on August 21, 1926, The Columbus Federation of Women's Clubs, then the owner of record of inlot 112, including the tract of land here under investigation, filed a petition in the Common Pleas Court of Franklin County, Ohio, for leave to encumber said inlot 112 and inlot 111 adjoining thereto, by a mortgage to be executed on said property for the sum of two hundred and seventy-five thousand dollars (\$275,000.00), and on September 27, 1926, after notice of said petition had been published in the manner provided by law, said court made an order granting to said The Columbus Federation of Women's Clubs authority to encumber said property by a mortgage in the sum of two hundred and seventy-five thousand dollars (\$275,000.00). Pursuant to this authorization The Columbus Federation of Women's Clubs on November 5, 1926, executed a mortgage to The Columbian Building and Loan Company in and for the sum of two hundred and seventy-five thousand dollars (\$275,000.00) which mortgage, among other property, covered said inlot 112, which included, of course, the tract here under investigation. This mortgage was executed by The Columbus Federation of Women's Clubs for the purpose of procuring funds for the construction of a club building on said inlot 112 and inlot 111, adjoining thereto.

After the execution of said mortgage The Columbus Federation of Women's Clubs proceeded with the construction of said building and in the construction of the same labor and material were furnished which were the predicate of two certain mechanic's liens which the abstract shows were filed as liens on said building structure and on said inlots numbers 111 and 112. One of these mechanic's liens is for the sum of one thousand sixty-one dollars and twenty-five cents (\$1,061.25), filed by one Heber W. Holt on February 28, 1927, and the other is a mechanic's lien filed by the L. L. Le-Que Company on August 5, 1927, in and for the sum of thirty-nine thousand three hundred sixty-seven dollars and seventy-eight cents (\$39,367.78).

In the action above referred to, filed by The Volunteers of America against Fred S. Spring and H. W. Acker, et al., for the execution and delivery of a deed to the plaintiff covering inlot 113 and that part of inlot 112 here in question, all persons then having any interest in said property were made party defendants in said action, including The Buckeye State Building and Loan Company which held a mortgage on said inlot 113 executed and delivered to it by said Fred S. Spring and H. W. Acker under date of January 5, 1924, in and for the sum of eighteen thousand dollars (\$18,000.00), and The Columbus Federation of Women's Clubs which, as above noted, obtained a record title to said inlot 112 by a deed from Fred S. Spring and H. W. Acker under date of January 10, 1924.

On December 31, 1926, the court, upon consideration of the pleadings and evidence in said case, found the issues therein in favor of The Volunteers of America, the plaintiff in said action, and ordered and directed that said H. W. Acker and the administrators and heirs at law of said Fred S. Spring, who had died in the meantime, the widow of said Fred S. Spring, the respective spouses of the heirs at law of said Fred S. Spring, and The Columbus Federation of Women's Clubs execute and deliver to The Volunteers of America a good and sufficient free and clear of all liens and encumbrances, except such as were due and payable after the 26th day of January, 1924, conveying to said The Volunteers of America, its successors and assigns, said inlot 113 and that part of inlot 112 which is here under investigation. It was further pro-

vided in the judgment and decree of the court in this case that should said parties defendant fail to execute and deliver such deed within ten (10) days that said decree should in and of itself be effectual to transfer the legal title to said premises from the defendants and each and all of them to the plaintiff. By said judgment and decree made and entered by the court in this case it was further provided that the mortgage in the sum of ten thousand dollars (\$10,000.00), executed and delivered by The Columbus Federation of Women's Clubs to Fred S. Spring and H. W. Acker under date of January 8, 1924, and which covered said inlot number 112, should be canceled and that the clerk of said court should enter a cancellation of said mortgage upon the margin of the record thereof.

Said cause having been appealed to the Court of Appeals of Franklin County, that court on August 15, 1927, entered a judgment and decree identical in its terms and provisions with that entered in the Common Pleas Court.

The mechanic's liens above referred to were filed of record after the judgment and decree of the Common Pleas Court in the action filed by The Volunteers of America to obtain a conveyance of the property here under investigation and of inlot 113 contiguous thereto; and the above noted mortgage executed by The Columbus Federation of Women's Clubs to The Columbian Building and Loan Company in and for the sum of two hundred and seventy-five thousand dollars (\$275,000.00) covering the premises here under investigation and other property then owned of record by The Columbus Federation of Women's Clubs, was executed, delivered and recorded while said action filed by The Volunteers of America to obtain title to this property was pending. Upon the consideration of familiar principles of law and equity applicable in this situation, I am of the opinion that The Volunteers of America have a good title to that part of inlot 112 covered by the abstract of title here presented as against said mechanic's liens and against the mortgages held by The Columbian Building and Loan Company and by said Fred S. Spring and H. W. Acker, above referred to. It appears from the abstract, however, that said pretended and apparent liens have not been canceled of record, and until this is done the purchase of this property should not be closed.

As further exceptions to the title of The Volunteers of America in and to the property here under investigation it is noted that said inlot 112 is subject to the lien of the following taxes and assessments: The taxes and penalty for previous years and for the first half of 1929 amount to three hundred seventy-eight dollars and seventy-five cents (\$378.75), to which is added a penalty of seven dollars and thirty-three cents (\$7.33) as penalty for failure to pay the taxes on said inlot for the first half of the year 1929. The taxes and penalties above noted are a lien on the property. The taxes for the last half of the year 1929, amounting to the sum of seventy-three dollars and twenty-five cents (\$73.25) and which are due and payable in June, 1930, are a lien on said inlot. The taxes for the year 1930, the amount of which is undetermined, are likewise unpaid and a lien upon said inlot. In addition to the taxes above noted, it appears that a balance of three hundred sixty-five dollars and sixty-two cents (\$365.62) on the assessment for the improvement of Front Street is a lien upon this property of which assessment balance the 6th and 7th installments thereof, amounting to two hundred and seventy-four dollars and twenty-three cents (\$274.23) and one hundred seventeen dollars and forty cents (\$117.40), interest and penalty thereon, are due and payable in June, 1930. It further appears that there is a water main assessment upon said inlot in the sum of fifty-eight dollars and eighty-two cents (\$58.82) to which should be added interest and penalty in the sum of sixteen dollars and thirty-two cents (\$16.32). It further appears from the abstract that there is a lighting system assessment on said inlot in the sum of three hundred twenty-five dollars and forty-eight cents (\$325.48) of which the first installment, amounting to thirty-two dollars and fifty-five cents (\$32.55), is due and payable in June, 1930. It likewise appears that there is a street cleaning assessment in the sum of nine dollars

and seventy-six cents (\$9.76) on said inlot, which is due and payable in June, 1930.

Touching the question of the authority of The Volunteers of America to sell the property here in question to the State of Ohio, it is noted that on January 10, 1928, said corporation filed its petition in the Common Pleas Court of Franklin County, Ohio, for authority to sell the property here in question and to encumber by mortgage inlot 113, likewise owned by it as the result of its action against Fred S. Spring and H. W. Acker and others above noted. It appears further that on February 9, 1928, after notice of said petition had been published in the manner required by law, said Common Pleas Court, by an order and decree, on said date made and entered, authorized The Volunteers of America to encumber said inlot 113 by mortgage in the sum of thirty-two thousand five hundred dollars (\$32,500.00), and with respect to the property here in question which was the second parcel described in plaintiff's petition in said case, said entry and decree provided as follows:

"It is further ordered that said The Volunteers of America be and hereby is authorized to sell the second parcel of said real estate as described in said petition and that it ascertain to whom, for what amount, and upon what terms and conditions said sale may be made and likewise report the same to this court."

It thus appears from the provisions of said decree and entry that before The Volunteers of America will be authorized to execute a deed for the property here under investigation to the State of Ohio it will have to report said sale to the court, stating in said report the name of the proposed purchaser, the amount of the purchase price and any other terms and conditions upon which the sale is to be made. Upon filing this report an order of the court authorizing the execution of a deed to the State of Ohio for the purchase price therein reported will have to be secured before such deed can be executed.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1954.

STATE OFFICE BUILDING—SPECIFICATIONS—STANDARDS SET UP ACCOMPANIED BY WORDS "OR EQUAL" LEGAL—GENERAL DISCUSSION.

SYLLABUS:

So long as specifications upon which public bids are to be predicated merely establish a standard of quality and practicability for the articles and materials to be furnished and permit bidders to bid on any article or material equal to the standard so established in such a way as to secure real competition on articles and materials of a specified standard, the selection of the particular article or material may lawfully be left to the owner or architect, and in the absence of an abuse of discretion on the part of the owner or architect in the selection of the particular article or material, a contract entered into after receiving bids on specifications of that kind for the article or material selected, will be a legal contract if the contract so made meets all legal requirements in other respects.

COLUMBUS, OHIO, June 6, 1930.

HON. HARRY HAKE, *Chief Architect, The Ohio State Office Building Commission, Cincinnati, Ohio.*

MY DEAR MR. HAKE:—I am in receipt of your inquiry with reference to the proposed specifications for the new state office building which reads as follows: