

interest at 4½% on this property for the street lighting improvement on Front Street. No installments have been paid on this assessment, and the whole amount of the same is a lien.

From information not appearing in said abstract, I have been advised that the title of Anna Binder to the above described property is subject to the encumbrance of a certain lease of said property executed by her under date of December 27, 1928, to one Charley Hop Sing, which lease is for a term of ten years beginning January 1, 1929. It further appears that said lessee is in possession and actual occupancy of the property under said lease.

With the abstract of title there has been submitted a warranty deed, executed by said Anna Binder, a widow, conveying this property to the State of Ohio. An inspection of said deed shows that the same has been properly executed and acknowledged by Anna Binder, and that the same is in form sufficient to convey the above described property to the State of Ohio by fee simple title, free and clear of all encumbrances except taxes and assessments on said property due and payable after the December, 1929, payment, and except the lease above noted, executed by the grantor to Charley Hop Sing, under date of December 27, 1928, which lease, as has been noted, is for a term of ten years from the first day of January, 1929.

Encumbrance estimate No. 629, which has been submitted to me as a part of the files relating to this matter has been properly executed and approved, and the same shows that there are sufficient balances in the proper appropriation account to pay the purchase price of this property.

Subject to the exceptions above noted, the title of Anna Binder in and to the above described property is hereby approved by me, and the same, together with said warranty deed and encumbrance estimate No. 629 are herewith enclosed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2080.

APPROVAL OF A CORRECTED DEED TO BE EXECUTED BY THE
GOVERNOR TO THE QUAKER OATS COMPANY OF AKRON, OHIO.

COLUMBUS, OHIO, July 9, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of a communication from Hon. A. T. Connar, Superintendent of Public Works, under date of July 3, 1930, which communication reads in part as follows:

“Attorneys Waters, Andress, Hegelbarger, Wise and Maxon, of Akron, Ohio, have presented to this department on behalf of their client, The Quaker Oats Company, of Akron, Ohio, an abstract of title and plats of surveys showing that there was an error in the deed originally made to The American Marble and Toy Manufacturing Company, for certain lands included in Block K, of King’s Addition to the City of Akron, which property, by various deeds of conveyance, is now owned by The Quaker Oats Company and has been owned by said company since the year 1907.

After a careful investigation, we are fully satisfied that there was an error in the original description of the property originally granted The American Marble and Toy Manufacturing Company, which error was undoubtedly

made by substituting the length of the line on the north side of the 20-foot strip of ground that was intended to be included in the original conveyance. This measurement was applied to the south line of the tract conveyed, which was the north line of West Center Street in the city of Akron, Ohio.

We believe that the controlling course in this deed is the line that parallels the face of the southerly lock wall of Lock No. 3, north of the Portage Summit Level of the Ohio Canal. This line was given as 27 feet distant and parallel to the inner face of said Lock No. 3. If the survey is started at 152.8 feet west of a point 263.10 feet west of the northwest corner of South Main Street and West Center Street in said city, and extended westerly along the northerly line of said Center Street 152.8 feet, the line that is supposed to parallel the lock wall and 27 feet distant therefrom would be practically 40 feet from the face of said lock wall, instead of 27 feet, as given in the old deed.

Mr. J. A. Gehres, Civil Engineer of many years standing and experience, has made a complete survey of the premises in question and has furnished this department with a blueprint thereof. To this plat we have added in yellow pencil the line on the northwesterly side of the tract as given in the deed and this line taken from the description in the deed should be ignored, and the boundary line shown in red substituted therefor.

In a conference at this office with Messrs. Ford, Booton and myself, Mr. Gehres stated that in locating the boundary lines of this tract that he discovered cast iron markers which were used in marking the line of the State canal property, and that the same were located at each angle of the survey, which, in itself, is convincing proof that the line as defined by the State monuments, is not the line described in the original deed.

I have no hesitancy in recommending that this deed be corrected to conform with the facts as established by a survey of the premises. I might add further that the line as corrected has been defined by the northwesterly line of a one-story frame warehouse constructed thereon by the Quaker Oats Company many years ago, and which still exists as it was originally constructed."

The communication directed to me by the Superintendent of Public Works is to a considerable extent self-explanatory. From my investigation of this matter it appears that acting pursuant to an act of the Legislature passed May 1, 1891, 88 O. L. 507 (Sec. 13971, G. C.), the State of Ohio acting through the officers named in said act sold to The American Marble and Toy Manufacturing Company a triangular tract of land adjacent to Lock No. 3 in the Ohio Canal at Akron, Ohio. This tract of land extended westwardly from the west line of Lots Nos. 14 and 22 in Block K of Seiberling's allotment in said city. It appears that some years prior to the time of this transaction, which was in the year 1898, the property here in question was claimed by said Seiberling who, assuming that he was the owner of this tract of land, reserved twenty feet off of the south end of the tract for the purpose of widening West Center Street from a twenty foot street to a forty foot street; and it appears that he caused a plat to be made of this and other property which showed the reservation of this twenty foot strip of land for street purposes. This plat showed a distance between the west line of lot 14 in Block K of Seiberling's allotment and the west line of the tract of land here in question of 152.8 feet measured along the north line of said twenty foot strip; while the distance between the west line of said lot 14 and the west line of the tract of land in question, measured along the south line of said twenty foot strip of land, which was likewise the south line of said tract of land, was 169.30 feet.

Thereafter when the title of the State of Ohio in and to this tract of land had been established and a deed was prepared to convey this tract of land to The American Marble and Toy Manufacturing Company pursuant to the sale of said property made

to it under the authority of the act of the Legislature above referred to, the course and distance of the south line of said tract of land was erroneously stated in the deed as 152.8 feet, instead of 169.30 feet which was the true length of the south line of the tract which the state by said deed intended to convey. By reason of the designated courses and distances in the following calls in the description of said property as contained in said deed the effect thereof was to convey to The American Marble and Toy Manufacturing Company less land than was contained in said tract and which the state intended to convey to said company.

Further investigation with respect to this matter shows that after The American Marble and Toy Manufacturing Company obtained said deed from the State of Ohio, which was executed by the Governor under date of September 2, 1898, it conveyed said property by a deed containing the same description to one Nathan Morse, trustee, under date of May 5, 1905; that thereafter under date of June 21, 1905, said Nathan Morse, trustee, conveyed this property by deed containing the same description to The American Cereal Company, which company later under date of August 23, 1906, conveyed the property to The Quaker Oats Company which company is now the owner of record of the tract of land here in question. The deed by which The Quaker Oats Company obtained title to this tract likewise contained the erroneous description of the property above mentioned. From the files submitted to me and from the investigation that I have made with respect to this matter I am of the opinion and so find that an error occurred in the deed executed by the State of Ohio to The American Marble and Toy Manufacturing Company in the manner above noted and that The Quaker Oats Company as the legal successor and assign is, under the provisions of Section 8528, General Code, entitled to receive from the Governor a deed correcting the error occurring in the description of the property contained in the former deed above mentioned executed to The American Marble and Toy Manufacturing Company.

I further find that inasmuch as the description of the land conveyed in said former deed did not convey any property that is not included within the correct description of the property which the state intended to convey to The American Marble and Toy Manufacturing Company, no property was erroneously conveyed to said company by said deed, and no release of the same to the State of Ohio is now necessary under the provisions of Section 8528, General Code.

I am herewith enclosing the files that have been submitted to me with respect to this matter, included in which you will find a deed which was prepared by the attorneys for The Quaker Oats Company and submitted by them to the Superintendent of Public Works. You may make such use of this deed as you may see fit in the preparation of the deed to be executed by the Governor under the provisions of the section of the General Code above noted in case he likewise finds that there was an error in the description of this property in said former deed.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2081.

**MUNICIPALITY—GASOLINE AND VEHICLE LICENSE TAX MONEYS
 APPLICABLE FOR CONSTRUCTING AND REPAVING ALLEY.**

SYLLABUS:

The portion of the gasoline and motor vehicle license taxes available to municipalities for the repaving of public streets and roads may be used for the purpose of repaving an alley dedicated to public use.