

2239.

APPROVAL, BONDS OF EAST LIVERPOOL CITY SCHOOL DISTRICT, COLUMBIANA COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, January 30, 1934.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2240.

APPROVAL, BONDS OF LISBON VILLAGE SCHOOL DISTRICT, COLUMBIANA COUNTY, OHIO, \$3,200.00.

COLUMBUS, OHIO, January 30, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2241.

APPROVAL, BONDS OF PARMA CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$3,000.00.

COLUMBUS, OHIO, January 30, 1934.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2242.

APPROVAL, CONDITIONALLY, VARIOUS LEASES EXECUTED BY THE FOSTORIA-FINDLAY TRACTION COMPANY TO THE STATE HIGHWAY DEPARTMENT.

COLUMBUS, OHIO, January 30, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration copies of various deeds numbered one to thirty-eight inclusive, which are copies of deeds executed by abutting owners to the Toledo, Fostoria and Findlay Traction Company, property which you contemplate acquiring for highway purposes. You request my views as to whether or not the Toledo, Fostoria and Findlay Traction Company can furnish you with warranty deeds on the property to be acquired.

Inasmuch as you have not submitted to me the evidences of title of the grantors in such deeds, I am assuming for the purposes hereof, that such

grantors had a good and indefeasible estate in fee simple to the property described in such deeds, free from any defects or encumbrances, and I express no opinion concerning the same.

From an examination of the copies of such deeds submitted, bearing in mind the assumption contained in the preceding paragraph, it would appear that such deeds conveyed the fee title to the premises therein described, to the Toledo, Fostoria and Findlay Traction Company with the exception of the deed designated No. 10 from Elizabeth Coons and Vincent H. Coons, her husband, and that such Traction Company obtained the fee title thereto subject to the defects hereinafter set forth. I will refer to these deeds by their respective numbers, and as to those deeds not mentioned you may assume that I have found no defects therein.

1. In deed No. 1 from Susan M. Morgan and Levi G. Morgan, her husband, there is contained an express reversion clause to the grantors in case the premises are not used for railway purposes to be operated by electricity or other motive power excepting steam, consequently, the land would revert to the grantors (Susan M. Morgan and Levi G. Morgan) if used for highway purposes, and therefore, it is my view that it is not possible for the Traction Company to grant you a warranty deed which will permit you to use this land for highway purposes.

2. In deed No. 2 from George M. Goodman and Bertha M. Goodman, although the land was granted in fee for railway purposes to be operated by electricity or other motive power excepting steam, inasmuch as there is no express reversion clause, under authority of *In re: Episcopal Church*, 120 O. S. 309 there would be no reversion to the grantor if conveyed to the highway department and used for highway purposes. Consequently there is no objection on this score. However, there is contained therein an agreement on the part of the Traction Company to build and maintain a fence, to maintain ditches and drains, along the premises therein conveyed and to give rights of ingress and egress to the grantor. These covenants would run with the land.

4. In deed No. 4 from William M. Appenzeller, Clara Appenzeller, his wife, Emma Ford and Lorenzo Ford, her husband, there is contained a clause saying that the railway should have been constructed and in operation on or before the first day of August, 1901, or this deed would have been void and of no effect. You must ascertain whether or not this condition was fulfilled. There is also contained in this deed an agreement on the part of the Traction Company to construct and maintain a good wire fence along the north side of said strip of land and the maintenance of drains along such premises therein conveyed. This covenant would run with the land.

Although this grant is upon the express condition that said strip of land shall be used only for the purpose of constructing thereon a railway to be operated by electricity or other motive power excepting steam, it is my view that since there is no express reversion or right of entry for the breaking of this latter condition contained therein that, if it is not used for traction purposes there would be no reversion to the grantor.

5. In this deed from Emma J. Coons and Eva M. Coons to the Traction Company there is nothing to show whether or not either of these two grantors were married or not at the time of the conveyance to the Traction Company. A deed from their husbands or satisfactory evidence that they were unmarried should be submitted to you.

8. In deed No. 8 from John P. Mosier and Maria F. Mosier, his wife, to the Traction Company, inasmuch as this deed was made in compliance with a certain written agreement made January 6, 1900, and recorded January 11, 1900, in Book 21, page 63, Hancock County, Ohio, Record of Leases, which written agreement was made a part of this conveyance, and since I have no copy of this agreement I am therefore unable to ascertain whether or not there are any restrictions in said agreement.

9. In this deed designated No. 9 from Susan Morrell, Frank Morrell and Martha Morrell, I am unable to ascertain whether or not one of the grantors, Frank Morrell, was married or unmarried at the time of conveyance. A deed from his then wife, if any, or satisfactory evidence that he was then unmarried should be submitted to you.

10. In the deed from Elizabeth Coons and Vincent H. Coons, her husband, there is a doubt as to whether or not the Traction Company acquired a fee title. It is my view that all they acquired was an easement of right of way from the grantors.

In this deed there is also contained a covenant running with the land that the grantee, the Traction Company, should build and maintain a suitable wire fence and keep in repair two crossings for ingress and egress to lands owned by the grantor.

11. In this deed from Jacob B. Wagner and Elizabeth E. Wagner, his wife, the deed is signed L. B. Wagner and not Jacob B. Wagner. If this is not a typographical error, the deed is void as in the granting clause it is Jacob B. Wagner and is signed L. B. Wagner and reformation of the instrument would be necessary if they were one and the same person.

18. In this deed designated No. 18 it is impossible to ascertain from the granting clause whether or not Emma Rainey is the wife of Charles W. Rainey and either you should require satisfactory evidence that Emma Rainey was the wife of Charles W. Rainey or ascertain whether or not either of these two parties were married at the time of the conveyance, and if they were, require a deed from their respective spouses.

28. In the deed designated No. 28 from Nicholas Bricker and I. M. Bricker, his wife, there is contained an agreement on the part of the Traction Company to build and maintain a page wire fence along the north line of said strip, to build and maintain a grade crossing, and to protect the drainage through and under the same. This covenant would run with the land.

30. In deed designated No. 30 from Alexander Hales, the acknowledgement of the grantor's signature is not correct in all respects but I do not think this is any real objection to the deed, and consequently recommend that this be considered no objection.

31. In deed designated No. 31, it does not appear whether or not Anna T. Hales was single or married at the time of the conveyance and you should require satisfactory evidence either that she was married to Alexander Hales or that she was unmarried or obtain a deed from her husband, if any.

36.—In deed designated No. 36, from the trustees of Washington Township, Hancock County, you should require evidence of the authority of the Township Trustees to make such deed and whether or not they were authorized by proper resolution.

37 and 38. In deeds designated Nos. 37 and 38 by E. J. Cunningham,

Nicholas Kiebel and Caroline Kiebel, his wife, there is contained an agreement on the part of the Traction Company to construct a good substantial crossing across the premises therein granted and a lawful fence along the north line of said strip and forever maintain the same in good condition and repair. Such a covenant would run with the land.

If these defects pointed out supra are cured, it is my view that such Traction Company or its successors could convey a good fee title to the property therein described.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

2243.

BEER—DUTY OF TAX COMMISSION TO ASSESS TAX ON BARREL BEER SOLD DURING AUGUST, 1933.

*SYLLABUS:*

*Under the provisions of House Bill No. 4, enacted by the 90th General Assembly at its first special session, returns made by permit holders on account of barrel beer sold by them during the month of August, 1933, were properly filed with the Tax Commission of Ohio on or before the 10th day of September, 1933; and from these returns and from such other information as was available to the Tax Commission, it was its duty to ascertain the amount of such taxes and certify the same to the Auditor of State in the manner provided by section 6212-58, General Code, as amended in said act.*

COLMBUS, OHIO, January 31, 1934.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge the receipt of your recent communication which reads as follows:

“The Beverage Tax Department requests your formal opinion relative to the respective duties of the Liquor Control Commission and the Tax Commission under the provisions of the last paragraph of H. B. No. 4. That portion of the bill reads as follows:

‘The amendments of sections 6212-50 and 6212-58 of the General Code hereby made shall be operative with respect to the returns and statements made in the calendar month next following the month in which this act shall take effect as a law. Said amendments shall not affect the power of the Ohio Liquor control commission to proceed under the law now in force in the collection of taxes and penalties accruing prior to the time when this act shall take effect as a law.’

It is our feeling that we have no jurisdiction to assess barrel taxes on beer or proceed in any manner with respect to such