

1310.

APPROVAL, LEASE, H. S. WILLARD, COAL RIGHTS, SUPPLEMENTING
LEASE GRANTED OCTOBER 29, 1918.

COLUMBUS, OHIO, June 5, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent letter transmitting for the approval of this department the sale and lease agreement to H. S. Willard, dated May 14, 1920.

From your letter it is noted that this lease is intended to supplant a former lease to Mr. Willard for the same coal rights dated the 14th of October, 1918, which was duly executed and approved by my predecessor on the 29th day of October, 1918.

It is also noted that the reason for executing the present lease is occasioned by Mr. Willard's misapprehension as to the effect of the former lease and that in your judgment the present lease is intended to merely more clearly state the same purpose and effect embodied in the former lease, but that as a matter of assurance to Mr. Willard your department has agreed to make and execute this new conveyance to take the place of the former one, which will be cancelled upon the delivery of the present lease.

In view of these facts no objection is apparent and the enclosed lease is therefore approved.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1311.

APPROVAL, ABSTRACT AND DEED, PREMISES SITUATED IN PERRY
COUNTY, VILLAGE OF NEW LEXINGTON, OHIO, COMLY'S ADDI-
TION.

COLUMBUS, OHIO, June 5, 1920.

HON. ROY E. LAYTON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—An examination has been made of an abstract which was certified by W. A. Allen, Abstracter, April 7, 1920, and submitted by you for an opinion in reference to the status of the title to the following described premises:

Situated in the county of Perry, in the state of Ohio and in the village of New Lexington, and bounded and described as follows:

Being lot number one hundred and four (104) in Comly's addition to the said village of New Lexington, Ohio, as the same is designated and delineated on the recorded plat of said addition now on file in the office of the recorder of said county.

The abstract shows the chain of title to said premises from June 14, 1816, the date upon which a conveyance was made by Samuel Clayton and wife to James Comly, but does not disclose where the said Samuel Clayton or his predecessors in title obtained the title. However, in view of the lapse of time it is not believed this defect constitutes a serious objection.

It is also noted that in the conveyance described at page 31 a release of dower is not shown, neither does it appear that the grantor, Frank Spencer, was unmarried.

Nevertheless, it is believed that the attached affidavit of Hamilton Nichols to the effect that the affiant had personal knowledge that the grantor was unmarried, corrects the defect mentioned.

It further appears on page 36 of the abstract that a mortgage granted by Jess Worley and Sarah Worley to Smith Wortman to secure the payment of the sum of \$100 and dated August 23, 1854, has not been released upon the record. However, in the court proceedings as shown on page 16 of the abstract it appears that this mortgage was ordered paid by the court. Therefore, it is concluded that the fact the same has not been released, under the circumstances, does not constitute a cloud upon the title.

The abstract discloses on page 37 that a mortgage given by M. A. Boling and wife to Smith Wortman, dated September 29, 1858, has not been released upon the record. However, it appears from the court proceedings disclosed on page 25 of the abstract that the premises herein described were ordered sold by the court to satisfy this same mortgage.

After careful consideration it is my opinion that said abstract discloses a good and sufficient title to said premises to be in the name of the trustees of New Lexington Lodge No. 250, F. and A. M., on April 7, 1920, the date of said abstract, subject to the life estate of Minerva Spencer and the taxes for the current year, which are a lien. It may be that the said Minerva Spencer is now deceased, but such fact is not shown by the abstract.

An examination has also been made of a deed previously submitted by you, executed October 25, 1919, wherein the trustees of New Lexington Lodge No. 250, F. and A. M., named therein conveyed to the state of Ohio the premises under consideration.

It will be observed that the grantors in said deed warrant the title to said premises to be free from all incumbrances. This, of course, indicates that the said Minerva Spencer, who retained a life estate in said premises when it was conveyed to said lodge, is now deceased.

It is believed that said deed is properly executed and sufficient to convey all of the title of the grantors to the state of Ohio when delivered.

Under the terms of said deed the state will be required to pay the taxes on said premises for the year 1920.

Inasmuch as you advise the state is contemplating erecting a valuable building upon the premises heretofore described you should determine definitely before taking such action that the said Minerva Spencer is now deceased, or, if living, the state should obtain from her a quit claim deed to said premises.

Respectfully,

JOHN G. PRICE,
Attorney-General.