

Thereafter on February 2, 1927, this property was conveyed by one S. L. Longfellow, as guardian of S. A. Longfellow, to George A. Katzenberger. The proceedings relating to the sale of this property by said guardian are not abstracted, and consequently his authority to sell and convey said property does not appear. This obviously is a defect in the apparent title by which this property is now held, which in itself would require my disapproval of the same on the abstract submitted.

The trustees of the Greenville Historical Society obtained their record title to the property here under investigation by a deed from said George A. Katzenberger and Grace M. Katzenberger, his wife. By reason of the objections above noted, the title of the Greenville Historical Society to the tract of land here in question is disapproved.

With said abstract of title there is submitted the deed of the Greenville Historical Society conveying this property to the State of Ohio. This deed has apparently been executed and acknowledged in the manner required by law and to be in form sufficient to convey the property here under investigation to the State of Ohio free and clear of all encumbrances whatsoever. By reason of the defect in the abstract of title relating to the title to this property you are, of course, advised not to accept said deed, until said abstract of title is corrected to show that the Greenville Historical Society has a good and indefeasible fee simple title to the property here in question.

I am herewith returning to you the files submitted by you with said abstract of title, to wit: warranty deeds executed by the Greenville Historical Society and by one Katherine H. Schlechty, respectively; and two quit claim deeds executed respectively by the American Aggregates Corporation to the Greenville Historical Society and by George A. Katzenberger and wife to the Greenville Historical Society. I am likewise forwarding to you opinions relating to the title of certain tracts and parcels of land now owned of record by Katherine H. Schlechty, Carl W. Engle and Lona Engle, and by the trustees of Neave Township, Dark County, Ohio, the respective title to which are covered by the abstract of title above referred to.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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1120.

APPROVAL, ABSTRACT OF TITLE TO LOTS 46 AND 47 OF KATHERINE H. SCHLECHTY, IN THE TOWN OF FORT JEFFERSON, DARKE COUNTY—DISAPPROVAL, LOTS 44 AND 45 OF SAME.

COLUMBUS, OHIO, October 29, 1929.

HON. HARRY D. SILVER, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you submitting for my examination and approval an abstract of title and a warranty deed relating to certain parcels of land held of record by one Katherine H. Schlechty, the acquisition of which is sought by the Greenville Historical Society under the authority of House Bill No. 143, passed by the 88th General Assembly under date of April 5, 1929, 113 O. L. 593. The property above referred to is more particularly described as follows:

*Tract 1.* Being lots 44 and 45 of the plat of the towns of Fort Jefferson, Ohio, laid out and dedicated by Hezekiah Viets under date of September 23, 1818.

*Tract 2.* Being lots 46 and 47 of the plat of the town of Fort Jefferson, Ohio.

*Tract 3.* Commencing at a point on N. line of lands owned by Sebastian Victor in S. E. Qr. Sec. 28 T. 11 R. S. E. 517.35 ft. west from an iron pin at N. E. cor. of said Victor's lands in center of Greenville & Ft. Jefferson pike, thence N. 89° and 31 W. with S. line of Victor's land 260.75 feet; thence N. 3° 5' E. 31.75 feet; thence S. 86° E. 59.8 to a stone at S. W. cor. of lands now owned by Wm. Lease; thence same course 199.2 feet to a stone at S. E. corner of Lease's land; thence south 3° 10' east, 16 feet to place of beginning, containing 142/1000 acre.

After careful examination of the abstract of title of the above described lots and parcels of land, I find that although there are some defects in the very early history of the title to said property described under Tracts 2 and 3, above noted, said Katherine H. Schlechty now has a good and merchantable fee simple title to the lots and parcel of land therein described, subject only to the undetermined taxes for the year 1929. Subject to said taxes, therefore, I hereby approve the title of said Katherine H. Schlechty to Tracts 2 and 3 above, which includes respectively lots 46 and 47 of the plat of the town of Fort Jefferson and the parcel of .142 of an acre of land above described.

As to lots 44 and 45 of the plat of the town of Fort Jefferson referred to under Tract 1 above mentioned, it appears that there are many and various defects in the history of the title to these lots. An extended discussion of the defects in the early history of the title to said lots 44 and 45 is not necessary, for the reason that the only record title of these lots held by said Katherine H. Schlechty is that possessed by her as the assignee of tax title certificate for said respective lots, issued by the County Auditor of Darke County to one John Bowers under date of January 16, 1906. These tax title certificates were assigned from time to time and passed to the ownership and possession of said Katherine H. Schlechty by transfer and assignment from one J. S. Hood under date of December 28, 1908. Apparently no tax title deeds were ever issued on said tax title certificates. Said tax title certificates were not in themselves sufficient to confer legal title to said lots upon said John Bowers or upon any of the assignees of said tax title certificates. *Wolcott vs. Holland*, 5 C. C. (N. S.) 604. Since said Katherine H. Schlechty obtained said tax title certificates by assignment from said J. S. Hood under date of December 28, 1908, the sections of the General Code relating to the execution of Auditor's Deeds upon tax title certificates have been repealed. Moreover, even if the execution and delivery of said tax title certificates constituted pending proceedings which had the effect of continuing in force the provisions of Sections 5719 et seq., relating to the execution and delivery of Auditor's Tax Deeds in such cases, said Katherine H. Schlechty would be barred from asserting any legal title under tax deeds so delivered, for the reason that more than twenty-one years have elapsed since January 16, 1908, when under the law said John Bowers or other person holding said tax title certificates by assignment and transfer, became entitled to demand tax deeds on said tax title certificates. See *Wolcott vs. Holland*, supra.

It therefore appears that all the legal right, title and interest held by said Katherine H. Schlechty in and to said lots 44 and 45 of the plat of the town of Fort Jefferson is that held by her by reason of her possession of said lots. Inasmuch however, as said Katherine H. Schlechty did not obtain possession of the tax title certificates until December 28, 1908, and she did not have any color of right to any kind of an interest in said lots until said time, and, clearly, on the facts appearing in this abstract, said Katherine H. Schlechty cannot be said to have held said lots by adverse possession for the full period of twenty-one years.

In this connection, I note that the abstract contains two affidavits, one signed by said Katherine H. Schlechty and the other signed by one Christopher Bacon, relating to the possession of said Katherine H. Schlechty of lots in the town of Fort Jefferson. The statements in both of said affidavits with respect to the adverse character of the possession of said lots held by said Katherine H. Schlechty are hardly more than mere conclusions on the part of said affiants, and are not of the evidential and operative nature required by this department in affidavits to show legal title to land by adverse possession. Moreover, it is noted that the affidavit of Katherine H. Schlechty refers to lots 45 and 46 in the town of Fort Jefferson and there is no reference in her affidavit to lot No. 44, the title to which is here in question. I do not see how under the facts as they appear in this abstract, I can approve the title of Katherine H. Schlechty to said lots 44 and 45 in the plat of the town of Fort Jefferson, and her title to said lots is hereby disapproved.

An examination of the warranty deed tendered by said Katherine H. Schlechty shows that the same has been properly executed and acknowledged by her and by her husband Virgil Schlechty, and that said deed is in form sufficient to convey to the State of Ohio a fee simple title to all of the above described property free and clear of all encumbrances whatsoever.

As pointed out in Opinion No. 720 of this department, directed to you under date of August 8, 1929, the deed of said Katherine H. Schlechty for such property as she may own, the acquisition of which is sought by the Greenville Historical Society, should, under the provisions of House Bill No. 143 above referred to, be executed and delivered to the Greenville Historical Society, which Society should in turn convey the property acquired by it to the State of Ohio. Moreover, no deed conveying said lots 44 and 45 in the plat of the town of Fort Jefferson should be accepted by either the Greenville Historical Society or by the State of Ohio until it is shown that said Katherine H. Schlechty has a good and merchantable legal title to said lots.

I am herewith returning said abstract of title and warranty deed.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1121.

APPROVAL, ABSTRACT OF TITLE TO LOTS 42 AND 43 OF TOWNSHIP TRUSTEES OF NEAVE TOWNSHIP IN DARKE COUNTY—DISAPPROVAL, LOTS 48 AND 49 OF SAME.

COLUMBUS, OHIO, October 29, 1929.

HON. HARRY D. SILVER, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title relating to certain lots and parcels of land owned of record by the trustees of Neave Township, Darke County, Ohio, the same being located in said county and being more particularly described as Lots Nos. 42, 43, 48 and 49 on the plat of the town of Fort Jefferson, Ohio.

Upon examination of the abstract of title submitted, I find that the township trustees of Neave Township, Darke County, Ohio, have a good and merchantable fee simple title to lots Nos. 42 and 43 of the plat of the town of Fort Jefferson, Ohio.

I am, however, unable to approve the title of said township trustees to lots Nos. 48 and 49, above mentioned, for the following reason: