

As for the second specific question, I might say that if the status of the society remains the same at the time that the county commissioners pass the annual appropriation measure for 1936, and the probate judge makes no finding before that time that the services of the agent are not needed, the said county commissioners can lawfully make an appropriation for the salaries of the said officials during 1936.

It is believed that the foregoing constitutes a sufficient answer to your questions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4596.

APPROVAL, ABSTRACT OF TITLE, ETC., TO LAND IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO, FOR PUBLIC HUNTING GROUNDS—CLINTON M. SEARL.

COLUMBUS, OHIO, August 30, 1935.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, certain deeds, contract encumbrance record No. 8, and Controlling Board's certificate relating to the proposed purchase by the State of Ohio, and from one Clinton M. Searl of a tract of land in Nile Township, Scioto County, Ohio, which tract of land as the same is described in prior deeds in the chain of title and in one of the deeds tendered to the state, is more particularly delineated and described as being part of survey No. 15423-15424, Virginia Military District, and set off by metes and bounds, as follows:

“Beginning at a point in the S. line of the Turkey Creek Pike half way between the South Western corner of the superstructure of the wooden covered bridge across Turkey Creek and the wire fence running S. 37° W. on the westerly end of a corn field. Said fence being about 407 ft. more or less, from said corner of said bridge; thence in a line parallel with said wire fence, S. 37 W. 400 ft.; thence in a south easterly direction with an irregular line parallel with the S/W lines of Turkey Creek Pike, about 1300 ft., more or less, to the middle of steep gut; thence down the said steep gut to the S/W line of said Turkey Creek Pike; thence up said Turkey

Creek Pike about 1300 ft. more or less, to the place of beginning.

The foregoing being a strip of land 400 ft. wide on the S/W side of the Turkey Creek Pike and extending from the middle of steep gut in a North Westerly direction to a line parallel with said wire fence. The said parallel line commencing at the south west line of said Turkey Creek Pike half way between the S/W corner of the superstructure of said bridge and the said wire fence, being 9 A. more or less.

Being a part of tract 2 of the premises conveyed by Christian Stall to Thomas G. Adamson by deed bearing date of Nov. 20, 1872, recorded in Vol. 21, pg. 300, Scioto Co., Ohio.

Rt. of way reserved to Peter Derksen up and along right hand side (west side) of said steep gut, and being the same premises conveyed by Edward Cunningham et al. to Clinton M. Searl by deed dated September 10th, 1921, and recorded in Volume 143, Page 128 Scioto County, Ohio, Record of Deeds."

Upon an examination of the abstract of title submitted, which abstract is certified by the abstracter under date of July 6, 1935, I find, waiving certain inconsequential defects in the early history of the title to this property that Clinton M. Searl has a good merchantable title to the tract of land above referred to and described and that the same is free and clear of all encumbrances except the 1934 taxes on the property in the sum of \$9.08 and except the undetermined taxes on this property for the year 1935.

Two deeds have been tendered to the state for the conveyance to it of the property here in question. One of these deeds is a warranty deed, and in this deed the property is described as being a tract of nine acres of land more or less, and the description of the property by metes and bounds in this deed apparently follows the description of the property as the same is contained in the deed by which Clinton S. Searl obtained title to the property. The other deed is a quit claim deed, and in this deed the tract of land is referred to as a tract of 12.38 acres, more or less; and the description of the property by metes and bounds as well as the amount of acreage therein stated conforms to a survey which, I understand, was recently made by engineers in your department. Both of these deeds convey the same particular and identified tract of land, and no objection is seen to the delivery and acceptance of both deeds.

It is noted, however, that in both of these deeds the consideration recited therein is "One dollar (\$1.00) and other good, valuable and sufficient considerations." Conformable to the well established rule of this office and of that of the Auditor of State the warranty deed by which this property is conveyed to the state should recite the actual consideration to be paid for the conveyance of this property, which consideration is the sum of \$500.00. If this correction is made in the warranty deed the recital as to consideration in the

other deed may, consistent with this rule remain as it is written. Both of these deeds have been properly executed and acknowledged and the form of the same is such that each of them is legally sufficient to convey this property to the State of Ohio by full fee simple title, with a covenant in the deed first above mentioned, that the property is free and clear of all encumbrances "except taxes."

Contract Estimate Record No. 8, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and the same shows a sufficient unencumbered balance to the credit of Item G-1 (Lands) in the appropriation to your department, to pay the purchase price of this property, which is the sum of \$500.00.

Upon examination of the Controlling Board's certificate, which is made over the signature of the then Director of Finance as President of the Controlling Board, under date of May 7, 1935, I find that the same is not sufficient for the purpose of showing that the purchase of this property has been approved by the Controlling Board. This certificate shows that the Controlling Board by proper action on the day above mentioned, authorized the transfer of the sum of \$500.00 from the Uses and Purposes Fund in the appropriation account of the Division of Conservation to the Item of G-1 (Lands) and thereby made this money available for the purchase of such lands as might be authorized by the Conservation Council and approved by the Controlling Board. However, this certificate does not show that the expenditure of this sum of money for the particular property here in question has been approved by the Controlling Board. In this situation I have had recourse to the minutes of the meeting of the Board of Control held on the day above mentioned; and from these minutes it appears that the transfer of this money by the Controlling Board was made for the express purpose of purchasing the above described property. This is, of course, a sufficient approval of the purchase of this particular tract of land.

With the other files referred to, above, you have submitted a copy of the minutes of a meeting of the Conservation Council under date of May 2, 1935, in which minutes it appears that at this meeting the Conservation Council authorized the purchase of this property as an addition to the Roosevelt Game Preserve. This action I assume, was taken under the authority of Section 1435-1, General Code, which authorizes the Conservation Council to acquire by purchase or otherwise, suitable lands for the purpose of establishing thereon public hunting grounds and to set aside any portion thereof as a state game refuge.

The abstract of title and deeds herein referred to, are approved subject to the exceptions above noted, as are the Contract Encumbrance Record and other files submitted, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.