

3636.

APPROVAL, CORRECTED ABSTRACT OF TITLE TO LAND OF HENRY MILLER, BURTON MILLER, ANNA POCOCK AND ADDA WORMAN IN TOWNSEND TOWNSHIP, SANDUSKY COUNTY, OHIO.

COLUMBUS, OHIO, October 5, 1931.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—Through the Division of Conservation in your department there has been submitted for my examination and approval a corrected abstract of title, warranty deed, contract encumbrance estimate No. 1 and a certificate of the board of control relating to the proposed purchase by the state of Ohio of a tract of 12.97 acres of land in Townsend Township, Sandusky County, Ohio, which tract of land is owned of record by Henry Miller, Burton Miller, Anna Pocock and Adda Worman as tenants in common.

The title to the tract of land above referred to was the subject of Opinion No. 3093 of this office, directed to you under date of July 2, 1931, in which opinion said tract of land was specifically described by metes and bounds.

In my former opinion to you, above referred to, the title of the persons above named in and to this tract of land was disapproved for the reason that there was nothing in the abstract then submitted to me to show how Joseph Miller, the father of the present owners of the record title to this property and through whom they claim, obtained title to said property. In the corrected abstract of title now submitted to me there is shown a delinquent tax title deed executed by the auditor of Sandusky County under date of September 6, 1854, by which there was conveyed to said Joseph Miller the east half of the southwest quarter of section 9, township 5, range 17, the same being a tract of 80 acres of land including the smaller tract of land, the title to which is here in question. From an affidavit of Henry Miller, one of the sons of Joseph Miller, and one of the owners as tenant in common of the property here in question, it appears that said Joseph Miller thereafter held and possessed said 80 acre tract of land until the time of his death which occurred some time in March, 1881; and that since that date affiant, his brother Burton Miller and his two sisters above named have likewise held and possessed the tract of land here in question openly and adversely and under claim of right; and that no question has ever been made with respect to the title of said Joseph Miller or of his children and devisees above named in and to this property.

In this situation, I am of the opinion that said Henry Miller, Burton Miller, Anna Pocock and Adda Worman, as tenants in common, have a good and indefeasible fee simple title to this property. I further find from the corrected abstract of title submitted to me, which was certified by the abstractor under date of August 18, 1931, that there are no liens or incumbrances upon said property other than the undetermined taxes for the year 1931, which are a lien upon said property.

The lien upon the property here in question for the undetermined taxes for the year 1931 does not, of course, affect the title of the state to this property for the reason that the lien for taxes imposed upon real property by the provisions of section 5671, General Code, is the lien of the state, and when the state obtains title by deed of conveyance, or otherwise, to property subject to such tax lien, the lien of the state for such taxes becomes merged in the larger title by which the state owns and holds the property. In an opinion of this office directed to the Auditor

of State under date of June 16, 1917, Opinions of the Attorney General, 1917, Vol. II, page 1024, it was held:

“The lien imposed by section 5671, G. C., upon real property for taxes thereon is that of the state, and when thereafter the state acquires the fee simple title to such property the lien for such taxes is merged in the larger title of the state and thereby becomes lost.”

The conclusion reached by the former Attorney General rendering this opinion is supported by the decided cases, and there is, in my opinion, no question as to the correctness of said former opinion upon this question. This conclusion does not affect the personal liability of the persons who owned and held the property in question at the time the tax accrued, to pay the same. *Creps vs. Baird*, 3 O. S. 278; *Warner vs. York*, 16 O. C. C. (N. S.) 369; *In re Estate of Harper*, 26 N. P. (N. S.) 431, 433. All I am holding in this opinion, is that the lien for taxes upon the property here in question does not affect the title which the state of Ohio takes to this property by the deed of conveyance executed by Henry Miller, Burton Miller, Anna Pocock and Adda Worman, hereinafter referred to.

I have carefully examined the warranty deed tendered to the state of Ohio by said Henry Miller, Burton Miller, Anna Pocock and Adda Worman and by Anna Miller, Verna Miller and A. C. Worman, the respective spouses of Henry Miller, Burton Miller and Adda Worman, above named. I find that said deed was properly executed and acknowledged by said above named persons, and that the form of said deed is such that it is sufficient to convey the tract of land here in question to the state of Ohio, free and clear of the dower interests of the spouses above named and free and clear of all incumbrances whatsoever. Said warranty deed is accordingly hereby approved.

Upon examination of contract encumbrance estimate No. 1, submitted to me as a part of the files relating to the purchase of the tract of land here in question, I find that the same has been properly executed and approved, and that there is shown thereby a sufficient balance in the proper appropriation account to pay the purchase price of said property, which purchase price is the sum of \$10,000.00.

It further appears that the money necessary to pay the purchase price of this property has been released by the board of control, as is evidenced by a resolution duly adopted by said board.

I am accordingly herewith returning with my approval said corrected abstract of title, warranty deed, contract encumbrance estimate No. 1 and board of control certificate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3637.

APPROVAL, BONDS OF BOARDMAN RURAL SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$17,000.00.

COLUMBUS, OHIO, October 6, 1931.

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