

1196.

APPROVAL, BONDS OF NEW RICHMOND VILLAGE SCHOOL DISTRICT,
CLERMONT COUNTY—\$37,500.00.

COLUMBUS, OHIO, November 14, 1929.

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

1197.

WILBERFORCE UNIVERSITY—NO POWER TO GRANT EASEMENTS IN
STATE LANDS WITHOUT LEGISLATIVE AUTHORITY.

SYLLABUS:

The Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University has no power to grant interests in lands under its control which are owned by the state, in the absence of express legislative authority therefor.

COLUMBUS, OHIO, November 14, 1929.

Board of Trustees, The Combined Normal and Industrial Department, Wilberforce University, Wilberforce, Ohio.

GENTLEMEN:—A recent communication received from Richard C. Bundy, Superintendent of your institution, reads as follows:

“By direction of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University, I have hereby to request an official opinion for the board on the following matters:

1. The Ohio Fuel Gas Company's mains cross the farm of the institution. A private citizen living on the road opposite the institution's farm desires to have gas service in his residence. This private citizen desires to lay across the state farm a service line from the Ohio Fuel Gas Company's mains to his residence. The permission to run the service line across the state farm is requested of the board by this citizen. All expense of work to be borne by him. The Board of Trustees desires to know whether it has the legal right to grant this request. If so, under what conditions?

2. The commercial service lines of the Dayton Power and Light Company are perhaps a half mile distant from the private residence of this same citizen. He requests permission to erect, without cost to the institution, inside of the property lines of the state farm adjoining the public highway poles which will carry the electric service lines of the Dayton Power and Light Company to his residence. The Board of Trustees also desires to know whether it has the legal right to grant this request and if so under what conditions.”

It may be stated as a general proposition of law that a state officer or board having the custody and control of real estate which belongs to the state may not grant any right or interest therein without express legislative authority to that

effect. In connection with your inquiry, your attention is directed to Opinion No. 81, issued by this department to Hon. Carl E. Steeb, Secretary of the Board of Trustees of Ohio State University, under date of February 9, 1929, the syllabus of which reads:

“Without legislative authority for that purpose, the Board of Trustees of the Ohio State University has no power or authority to grant to the City of Columbus an easement in and across the lands of said institution for the purpose of a sewer to be constructed and maintained therein by said city.”

In many instances the legislature has authorized the granting of such rights or easements for various purposes. In this connection it should be noted that the Wilberforce University is a private institution and has combined with the state for normal and industrial education.

In the case of *Board of Trustees of Combined Normal and Industrial Department of Wilberforce University vs. Green, et al.*, 113 O. S. 15, the court made a finding in its per curiam opinion in reference to the status of this institution. From the facts stated in the opinion it appears that “Wilberforce University is a private university established for colored students, owning its own real estate and personal property. A normal and industrial department at the University of Wilberforce has been established by the state, which operates various state buildings constructed on land owned by the State of Ohio.”

From the foregoing, it appears that some of the lands utilized in the operation of your university in conjunction with the state is owned by the state, while other lands are owned by Wilberforce University. However, in your communication you refer to “state farm”, and it is therefore assumed that you have reference to state lands as distinguished from lands owned by the Wilberforce University in its own right. It therefore must be concluded that your board of trustees has no power to grant an easement or interest in any lands owned by the state unless there is express legislative authority to that effect, and no such power has as yet been granted by the Legislature. Of course, what has been said would not have application to lands which were owned by the university.

Specifically answering your question, you are advised that the Board of Trustees of the Combined Normal and Industrial Department at Wilberforce University has no power to grant interests in lands under its control which are owned by the state, in the absence of express legislative authority therefor.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1198.

COUNTY COMMISSIONERS—FURNISHING OF TUBERCULAR RELIEF NOT LIMITED TO PAUPERS—ABUSE OF DISCRETION—MAINTAINING PATIENT IN HOSPITAL OUTSIDE OHIO UNAUTHORIZED.

SYLLABUS:

1. *The primary purpose of Section 3143 of the General Code is to provide for relief to persons who are inmates of the county infirmary suffering from tuberculosis, or other residents of the county in a similar status. However, the statute gives some dis-*