

24.

APPROVAL—ABSTRACT OF TITLE, ETC., TO LAND IN ERIE,
TOWNSHIP, OTTAWA COUNTY, OHIO.

COLUMBUS, OHIO, January 21, 1937.

HON. EMIL MARX, *Adjutant General, Columbus, Ohio.*

DEAR SIR: There have been submitted to this office for examination and approval an abstract of title, warranty deed, contract encumbrance record No. 196 and other files relating to a tract of land which is owned of record by one May Barnes in Erie Township, Ottawa County, Ohio, and which is more particularly described in the option which you secured for the purchase of this property and in the deed tendered by May Barnes:

“Being the west half of the west half of the northeast quarter of Section No. Thirty-three (33), Township Seven (7) North, Range Sixteen (16) East, being the same lands deeded to Edward G. Zoschke by deed recorded in Volume 40 at page 107, Ottawa County Deed Records, excepting therefrom 14 acres thereof heretofore conveyed to Frank McCreery and also excepting a right of way 20 feet in width off of the south end thereof, but subject to all legal highways.”

Upon examination of the abstract of title submitted, which abstract is certified by the abstracter under date of October 16, 1936, I find that May Barnes, the owner of record of the above described property, has a good and indefeasible fee simple title to this property subject to the liens and other encumbrances which are herein stated as exceptions to the title in and by which said May Barnes owns and holds this land:

1. On March 18, 1926, one Nicholas F. Wadsworth, who was then the owner of the above described tract of land and of other lands contiguous thereto, executed a written agreement in the apparent form of a deed in and by which he granted to the Ohio Public Service Company the right to construct and operate a line or lines for the transmission of electrical energy for any and all purposes for which electrical energy is now or may hereafter be applied with all necessary poles, cables, fixtures or appliances through, over and upon the premises then owned by him and described in said instrument as follows:

“Along Port Clinton-Bono highway No. 23 from the eastern boundary to the western boundary of the west half of the

west half of the northeast quarter of Section 33, Erie Township, Ottawa County, Ohio. Said line or lines to be erected only upon the 8 foot strip immediately adjoining the highway.”

There is nothing in the abstract of title to show whether any electrical transmission line or lines have been constructed by said company under the easement therefor granted to it by this instrument. However, this is a matter of fact which can be determined upon observation by you or by your subordinate officers and agents in charge of the project for which this property is to be purchased. In any event, this easement appears to be an encumbrance upon the property which should be noted as an exception to the title in and by which the record owner holds this land.

2. On March 3, 1928, Everett L. Wadsworth, then the owner of the property here in question, entered into a certain land contract, so-called, with one Andrew C. Sizemore, in and by which said Everett L. Wadsworth contracted and agreed to sell the property here in question to said Andrew C. Sizemore in consideration of the payment of the sum of \$2800.00 therefor, of which amount \$50.00 was paid in cash at the time of the execution and delivery of the land contract and \$50.00 was to be paid each and every month thereafter until the full amount of said \$2800.00 was fully paid with interest at the rate of seven percent per annum payable semiannually. It was further provided in this land contract that Andrew C. Sizemore was to have the immediate possession of a part of the land here in question while the remainder of said land was to be retained in possession by Everett L. Wadsworth until such time as the full amount of the consideration was paid by Sizemore. Nothing is stated in the abstract to show what, if anything, was done by the parties to this contract under the provisions of the same. If, as provided for in the contract, Sizemore made monthly payments on the purchase price of this property, an equity in the land was thereby created in him to the extent of the payments so made and, on the other hand, Wadsworth not only retained the legal title to the property but as against Sizemore had at all times a vendor's lien against the property to the extent of the amount remaining unpaid upon the purchase price of the property, together with legal interest thereon. Again, if Sizemore, acting under the provisions of this contract, took actual possession of this land or of any part thereof, the State of Ohio, as the purchaser of this property, will be required to take notice of whatever rights Sizemore as one in possession may have in and with respect to this land. In any view, full information should be furnished to this office with respect to the transactions which took place between Wadsworth and Sizemore under this

contract and with respect to the present status of the contract as between said parties.

3. On April 3, 1931, Everett L. Wadsworth executed a deed in and by which he granted to the State of Ohio an easement for highway purposes in and over the above described tract of land. This easement and the exact location of the highway therein referred to is a matter within your knowledge and the same is here mentioned only for the reason that in legal contemplation the same is an encumbrance upon this property.

4. On February 19, 1934, one William Barnes who, apparently, was the husband of May Barnes, the owner of the property here in question, executed a deed or other similar instrument in and by which he granted to the Northern Ohio Telephone Company the right to construct, operate and maintain lines of telephone and telegraph with all necessary conduits, manholes, poles, wires, cables and other equipment over and/or under this property. Apparently, this easement was and is on that part of said property which is immediately adjacent to State Highway No. 2 and/or the Camp Perry Road. You and your officers and agents in charge of the project for the extension of the site of Camp Perry are doubtless familiar with any construction work that was done by the Northern Ohio Telephone Company under this easement. Inasmuch as William Barnes, apparently, had only an inchoate dower interest in this property at the time of the execution of this easement and he has since died, it may be doubted whether said easement, if the same has not heretofore been acted upon, has any validity. This easement is here noted as an apparent encumbrance to the end that you make such investigation with respect to this matter as the execution of the easement may suggest.

5. On May 21, 1934, May Barnes and William C. Barnes, her husband, then living, executed a mortgage deed to The American Bank of Port Clinton of and on the above described property and of and on certain other lots and lands in the village of Port Clinton for the purpose of securing the payment of a certain promissory note of even date therewith in the sum of \$9407.41 then and there executed and delivered by said May Barnes and by William C. Barnes to The American Bank of Port Clinton. This mortgage has been released as to some or all of the property in the village of Port Clinton covered by this mortgage; but there is nothing in the abstract to show that this mortgage has been canceled of record or released as to the tract of land here in question. And the mortgage is a lien upon this tract of land to the extent of the amount unpaid upon the promissory note secured by this mortgage and the accrued interest thereon. Needless to say, provision should be made for the payment and cancellation of this mortgage before the transaction for the purchase of this property is closed by the issue of voucher and

warrant to cover the purchase price of the property. In this connection, it is noted that the mortgage above referred to was apparently executed by May Barnes and William C. Barnes before May Barnes obtained title to this property by warranty deed from Everett L. Wadsworth and Malinda Jane Wadsworth under date of June 4, 1934. However this may be, this property should not be purchased by your department until this mortgage is canceled and released of record.

6. On July 12, 1934, May Barnes executed a deed in and by which she granted to the State of Ohio an easement for highway purposes in and over the above described tract of land, said easement to follow a line more particularly described in said instrument. I assume that your department is familiar with this easement and with any road construction by the State Highway Department pursuant thereto; and this easement is here noted for the reason that in legal contemplation the same is an encumbrance upon the property described.

7. The undetermined taxes on this property for the year 1936 are unpaid and are a lien upon this property. Inasmuch as by the warranty deed tendered to the State of Ohio the state is to acquire this property free and clear of all encumbrances whatsoever, you should see that provision is made for the payment of these taxes before the transaction for the purchase of this property is closed.

The warranty deed tendered to the state by May Barnes, who, it appears, is a widow and unmarried, has been properly executed and acknowledged by said grantor and the form of the deed is such that the same is legally sufficient to convey this property to the state by the description of the same therein contained. As above noted, the property is described in the deed as being the west half of the west half of the northeast quarter of Section No. 33 in the township and range above mentioned, being the same lands deeded to Edward G. Zoschke by deed recorded in Volume 40, page 107, Ottawa County Deed Records, "excepting therefrom 14 acres thereof heretofore conveyed to Frank McCreery and also excepting a right of way 20 feet in width off of the south end thereof, but subject to all legal highways." It is suggested that this excepted land be referred to in connection with the deed by which the same was conveyed to McCreery and to the record thereof in the office of the Recorder of Ottawa County and, to this end, it is further suggested that the above quoted language found in the description of this property be changed to read as follows:

"excepting therefrom 14 acres thereof heretofore conveyed by N. F. Wadsworth and Emma Wadsworth, husband and wife, to Frank McCreery by deed under date of April 18, 1924, recorded in Volume 87, page 344, Ottawa County Deed Records, to which

reference is here made, and also excepting a right of way 20 feet in width off of the south end thereof, but subject to all legal highways.”

Contract encumbrance record No. 196, which has been submitted to me as a part of the files relating to the purchase of the above described property, has been properly executed and the same shows that as of the date of the execution of said instrument, to wit, November 27, 1936, there was an unencumbered balance in the appropriation account to the credit of your department sufficient in amount to pay the purchase price of this property, which purchase price is the sum of \$33000.00. In this connection, it is noted that this contract encumbrance record does not carry the approval signature of the Director of Public Works. In view of the general provisions of Section 154-40, General Code, authorizing the Superintendent of Public Works to purchase all real estate required by the state government, or any department, office or institution thereof, it is suggested that before the files relating to the purchase of this property are submitted to the Auditor of State, together with your voucher covering the purchase price of the property, the approval of the Superintendent of Public Works and Director of said Department be secured. This will obviate any question with respect to the authority of the Auditor of State to issue his warrant for the purchase price of the property.

It is noted further by way of recital in said contract encumbrance record, as well as by the certificate of the Controlling Board, submitted as a part of the files, that the purchase of the above described and other adjacent property in connection with the extension of the site of Camp Perry, has been approved by the Controlling Board.

I am herewith returning to you the files above referred to for your further attention in connection with the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.