

1142.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED AND CONTRACT ENCUMBRANCE RECORD RELATING TO THE PURCHASE OF CERTAIN PREMISES IN GOSHEN TOWNSHIP, TUSCARAWAS COUNTY, OHIO.

COLUMBUS, OHIO, September 11, 1937.

*The Ohio State Archacological and Historical Society, The Ohio State Muscum Building, Columbus, Ohio.*

GENTLEMEN: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, warranty deed, copy of contract encumbrance record and other files relating to the purchase of certain premises situated in Goshen Township, Tuscarawas County, Ohio, which property, together with reservations affecting a part of the same, is described and set out in the deed conveying this property to the State of Ohio, as follows, to wit:

Lots Numbered Twenty-seven (27), Twenty eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33), and Thirty-four (34) in J. C. Adair and C. A. Leech's Sub-division of parts of Lots Number Seven (7); Eight (8) and Nine (9) of the Schoenbrunn Tract known as the New Schoenbrunn Allotment, recorded in Plat Book 5, at Page 37.

Lots Number Thirty-three (33) and thirty-four (34) being subject to the reservations in deed of Perry G. Knisely and wife to William G. Saunders, dated August 6, 1918, and of record in the Tuscarawas County, Ohio, Deed Records, in Volume 181, at page 122. Be the same more or less, but subject to all legal highways.

The above described lots and premises are now owned of record by The Citizens National Bank, New Philadelphia, Ohio. And upon examination of the abstract of title of this property submitted to me, which abstract of title is certified by the abstracter under date of July 8, 1937, I find that as of said date The Citizens National Bank, New Philadelphia, Ohio, had a good indefeasible fee simple title to the above described property and that it owns and holds this property free and clear of all encumbrances except the taxes on the property for the last half of the year 1936, amounting to \$9.69, and the undetermined taxes on the prop-

erty for the year 1937 and except the encumbrances hereinafter noted, some of which may not, perhaps, affect in any substantial way the particular property here under consideration in the use which is to be made of the same as a part of Schoenbrunn Park. The encumbrances here referred to are as follows:

1. On May 15, 1926, Clyde J. Knisely, who then owned the above described and other contiguous lands, executed an instrument in deed form in and by which he granted and conveyed to The Ohio Service Company a right of way and easement in and over said lands then owned by him for the construction and maintenance by said grantee of electric power and/or telegraph and telephone lines. This lease was duly recorded June 21, 1926, in Volume 18, page 347, in the office of the Recorder of Tuscarawas County, Ohio.

2. On July 13, 1926, said C. J. Knisely executed a second easement deed in and by which he granted to The Ohio Power Company a right of way in and upon said lands for the construction and maintenance thereon of electric power, telegraph or telephone lines.

There is nothing in the abstract to show what, if anything, has been done by either of the grantees above named with respect to the construction of electric power, telegraph or telephone lines under the easements therefore granted to them, respectively, for these purposes. Nor is there anything in the abstract of title or in any of the other files submitted to me to show how such lines or any of them, if constructed, will affect the property here under consideration. This is a matter for your consideration and determination before closing the transaction for the purchase of the property.

The same observation may properly be made with respect to a deed of easement executed and delivered by said Clyde J. Knisely to The Ohio Power Company under date of August 6, 1927, in and by which there was granted and conveyed to the grantee above named a right of way in and upon the lands of said Knisely for the same purposes indicated in the easement deeds above referred to. And as to this easement, the deed granting which is recorded in Vol. 21, page 333 of the Records in the office of the Recorder of Tuscarawas County, Ohio, you should likewise ascertain and determine whether any electric power, telegraph or telephone line or lines have been constructed as in said deed provided for, and whether, if such line or lines have been constructed, they will in any wise interfere with the use of the property as a part of Schoenbrunn Park.

3. On February 18, 1937, The Citizens National Bank, New Philadelphia, Ohio, executed and delivered an oil and gas lease to The East Ohio Gas Company covering the above described and other contiguous lands owned by the grantor, and in and by which the lessee above named

was given the right to enter in and upon such lands and to drill thereon for oil and gas and to construct on the premises covered by the lease such tanks, stations and other structures as might be necessary in the removal of gas and oil or either from this property. It was and is provided by this lease that the same should continue in force for a term of five years and for as much longer as oil or gas or their constituents are found on said premises in paying quantities. This lease is, of course, an encumbrance upon the particular property here under investigation, as well as upon the other property of The Citizens National Bank, New Philadelphia, Ohio, covered by said lease. The existence of this encumbrance is recognized in the warranty deed executed by The Citizens National Bank of New Philadelphia, Ohio, by which this property is to be conveyed to the State of Ohio. By this deed the lots above described, the same being Lots 27 and 34, inclusive, in J. C. Adair and C. A. Leech's subdivision, are conveyed to the State "subject to the express condition that no drilling for oil or gas shall be done on the premises herein conveyed during the life of that certain oil and gas lease executed and delivered to The East Ohio Gas Company by The Citizens National Bank of New Philadelphia, Ohio, on February 18, 1937, and recorded in Volume 31, Page 569, of the Tuscarawas County, Ohio, Records of Leases." However, I do not find in the abstract of title or in any of the other files submitted anything to show that The East Ohio Gas Company has released these particular lots from the operation of said lease; and it is suggested that before the transaction for the purchase of this property is closed, The Citizens National Bank of New Philadelphia, Ohio, be required to obtain such release from The East Ohio Gas Company.

Upon examination of the warranty deed tendered by The Citizens National Bank of New Philadelphia, Ohio, I find that said deed has been executed and acknowledged in manner and form as required by law by the hands of its President and Cashier and that the form of this deed is such that the same is legally sufficient to convey the above described property to the State of Ohio by fee simple title subject only to the reservation with respect to Lots Nos. 33 and 34 therein referred to and to the condition above mentioned providing that there shall be no drilling for oil or gas upon these premises during the life of the oil and gas lease theretofore executed by said grantor to The East Ohio Gas Company. The reservation above mentioned as one contained in a deed executed by Perry C. Knisely and wife to William C. Saunders, dated August 6, 1918, was in legal effect a condition that the property thereby conveyed, to wit, a part of Lot 32 and Lots 33 and 34 above described, should not be used for gravel production purposes or for any immoral purposes. It is readily seen, therefore, that this reservation will not

affect the use which you desire to make of this property for park purposes.

The copy of the contract encumbrance record submitted to me as a part of the files relating to the purchase of this property shows a sufficient balance in the appropriation account to the credit of your Society, otherwise unencumbered, to pay the purchase price of the property, which purchase price is the sum of \$4300.00. And it likewise appears in this connection that the purchase of this property has been approved by the Controlling Board and that said Board has released from the appropriation account the money necessary to pay the purchase price of the property in the amount above stated.

Subject to the exceptions above noted, I am approving the title of The Citizens National Bank of New Philadelphia, Ohio, in and to the above described property. The warranty deed, contract encumbrance record and other files relating to the purchase of the property are hereby approved and the same, together with the abstract of title, are herewith enclosed for your further action in closing the transaction for the purchase of this property.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1143.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA  
COUNTY, OHIO, \$200,000.00.

COLUMBUS, OHIO, September 13, 1937.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of City of Cleveland, Cuyahoga County, Ohio,  
\$200,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of re-funding bonds in the aggregate amount of \$1,124,500, dated September 1, 1937, bearing interest at the rate of  $2\frac{3}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds