

and repair of roads. Likewise they indicate how closely the work of a county engineer is linked with that of a township clerk. In this connection it is significant that the county engineer is to call the township officials to this annual meeting and it may very well be that he would want the various township clerks to be present in the interest of uniformity of accounts and records in reference to the construction and repair of roads.

Reference has already been made to the fact that the duties of the county engineer in this respect are closely allied to those of the township clerk and the county engineer in determining who the township authorities are that he wishes to be present at this meeting, could very properly determine that the township clerk should be present. It is a known fact that the various county engineers do feel that the township clerks should attend these annual meetings. The determination of the county engineer in the absence of fraud or an abuse of discretion, should be controlling in reference to this question.

It is, therefore, my opinion in specific answer to your inquiry that township clerks who are called by the county engineer to attend the annual meeting provided for by Section 7189, General Code, are entitled to their actual and necessary expenses in addition to their regular per diem or salary, the same to be paid by the county treasurer from the road and bridge fund of the county on itemized vouchers approved by the county engineer.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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6065.

APPROVAL—CERTIFICATE OF TITLE, ETC., TO LAND IN  
GREEN TOWNSHIP, SUMMIT COUNTY, OHIO—MYRTIE  
PROVENS.

COLUMBUS, OHIO, September 11, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certificate of title, warranty deed and encumbrance record No. 9, relating to the purchase of a parcel of land which is owned of record by one Myrtie Provens in Green Township, Summit County, Ohio, and which is more particularly described in the deed which has been tendered by said grantor to the state of Ohio as follows:

Being all of Lot No. 13 in C. C. McCue's Little Farms in the West half of the Northwest Quarter of Section No. 19, Green Township, as surveyed by S. G. Swigart and Son, and recorded in Plat Book 36, Page 7, Summit County Records of Plats.

Said Lot is subject to all legal highways.

Excepting and reserving from the above described premises the land conveyed to The Canton, Massillon and Akron Railroad Company by deed dated August 14, 1901 and recorded in Volume 273, Page 613 of Summit County Records.

The above described tract of land is all of Lot No. 13 in C. C. McCue's Little Farms Addition except a sixty-foot strip of land through the same previously conveyed by one Charles A. Smith and Matilda Smith, predecessors in title to an eighty-acre tract of land including that above described, to The Canton, Massillon and Akron Railroad Company as a right of way, the tract of land here in question exclusive of said right of way comprising 3.83 acres of land.

Upon examination of the certificate of title submitted to me, I find that as of the date of said certificate, to wit, March 24, 1936, Myrtle Provens, the owner of record of the above described parcel of land, had a good indefeasible title thereto which was free and clear of all encumbrances except the following:

1. On March 16, 1907, Charles A. Smith, being then the owner of a larger tract which included that above described, granted an easement to one Charles E. Wise, in and by which said Charles E. Wise, his heirs and assigns were granted the right to construct upon said premises a number of poles along the west side of the grantor's lands for the purpose of carrying a line of telephone wires. The certificate of title does not advise me as to what, if anything, was done by Charles E. Wise under the rights granted to him by this easement or how this telephone line, if the same has been constructed, affects the particular parcel of land here under investigation. In any event, on the certificate of title as presented to me this easement must be considered an encumbrance upon this property.

2. Under date of November 13, 1908, said Charles A. Smith, being the owner of said eighty-acre tract of land, including that here under investigation, granted to The Tide Water Pipe Company a right of way in and by which said company, its successors and assigns were given the right to lay, maintain and operate pipe lines and a telegraph line in and over the lands then owned by said Charles A. Smith. Again, I am not advised as to whether or not any pipe lines or the telegraph line covered

by this easement was constructed under the rights thereby granted or how, if such lines or either of them has been constructed, the particular parcel of land here under investigation is affected thereby. As here presented, however, this easement and the rights granted to The Tide Water Pipe Company must be considered to be an encumbrance upon the property.

3. Under date of August 16, 1928, C. Clifton McCue, being then the owner of the eighty-acre tract of land above referred to, which included the parcel here in question, executed to The East Ohio Gas Company an oil and gas lease in and upon the property therein described. This lease was for a term of five years and for so much longer as oil or gas is found upon the premises described in the lease. Nothing is stated in the certificate of title to show whether or not The East Ohio Gas Company has commenced any operations for the production of oil or gas under this lease or, if so, how such operations affect the parcel of land here under investigation. In any view, however, on the information presented, this oil and gas lease must be noted as an encumbrance, although there is a possibility that the rights of The East Ohio Gas Company under this lease have been terminated.

4. Under date of October 10, 1935, Myrtie Provens, the owner of record of the parcel of land here under investigation, executed a mortgage deed, together with her husband, William C. Provens, to one Virginia N. Hancock. This mortgage was executed for the purpose of securing the payment of a note of even date therewith in the sum of \$540.59. This mortgage has not been released and the same is a lien upon the above described property to the amount of the principal and interest on this note now remaining unpaid.

5. It appears from the certificate of title that an assessment for the improvement of what is known as the South Main Street Road has been levied upon the above described parcel of land. This assessment is one payable in twenty semiannual installments of \$10.72 each, beginning December 20, 1926. In the certificate of title the status of said assessment and the installments thereof is stated as follows:

“Delinquent Assessments of former years, amounting to \$34.30, are a lien.

Assessments for the first half of 1934, amounting to \$10.72, are delinquent; penalty \$1.07.

Assessments for the last half of 1934, amounting to \$10.72, are delinquent; a penalty of 10% will be added to this amount.

Assessments for 1935 and thereafter are unpaid.”

In this connection, it may be noted that the total amount of the assessment levied against this property became a lien thereon from the time the

assessment was made by the assessing authority and that said assessment, together with any penalties thereafter assessed, is a lien upon the property to the extent that said assessment and installments thereon and penalties remain unpaid.

6. It appears from the certificate of title that the following taxes are a lien upon this property: (1) delinquent taxes for former years and penalties, \$9.99; (2) taxes for the first half of the year 1934, together with penalty, \$4.95; (3) taxes for the last half of 1934, together with penalty, \$4.95; (4) taxes for the year 1935, the amount of which is not stated, are unpaid and are a lien upon the property; (5) the undetermined taxes for the year 1936 are likewise a lien upon this property.

Upon examination of the warranty deed tendered by Myrtie Provens, I find that the same has been properly executed and acknowledged by said grantor and by William C. Provens, her husband, and that the form of this deed is such that it is legally sufficient to convey the above described property to the state of Ohio by full fee simple title with a covenant therein contained that the property here in question is conveyed to the state of Ohio free and clear of all encumbrances whatsoever. I assume from this covenant in the deed that the grantor is to pay the taxes which are a lien upon this property and will further pay off said mortgage or otherwise secure the cancellation and the release of the same; and that she will likewise secure the release of the other encumbrances above noted. In this connection, it is suggested that all of these matters be adjusted by and between your department and the grantor above named before the transaction for the purchase of this property is closed by the delivery to the grantor of the warrant covering the purchase price of the property.

Contract encumbrance record No. 9, which has been submitted to me 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 in the proper appropriation account to the credit of your department to pay the purchase price of the above described parcel of land, which purchase price is the sum of \$2,600.00. It likewise appears from this contract encumbrance record that the purchase of this property has been approved by the Controlling Board, which Board has released from the appropriation account the money necessary to pay the purchase price of the property. Except as above noted, the title of Myrtie Provens in and to the property here in question is approved and I am herewith returning to you said certificate of title, warranty deed and contract encumbrance record No. 9.

Respectfully,

JOHN W. BRICKER.

*Attorney General.*