

am of the opinion that the same now shows a good, merchantable title in Emerson H. and Ida B. Votaw, subject to the following:

1. The taxes for the last half of 1926, and also for the year 1927, amount undetermined, are unpaid and a lien.

2. The abstractor's certificate shows "No examination made in U. S. Courts", and that examination was made in the name of record owners only and only for the period during which each one respectively held title.

My examination of the abstract pertaining to the second parcel consisting of 41.92 acres, discloses the following:

1. The title to 35 acres of this parcel has not been abstracted prior to 1866, when William Ritchey and wife transferred that quantity of land to James G. Hawley. However, from that time on the abstract shows a connected succession down to the present owner, Emerson H. Votaw.

2. Another portion of this parcel was occupied by the Sandy and Beaver Canal Company, for which portion there is no abstract prior to December 16, 1909, when the Hawley heirs transferred the entire 41.92 acres to M. B. and E. H. Votaw.

3. The remaining part of this parcel is involved in certain lots in the plat of the village of Guilford, which was platted about 1835 by McCook, Willard & Shriver. In December, 1909, a large number of these platted lots were vacated by the Hawley heirs, and included in this list of vacated lots are found lots Nos. 13 to 27 inclusive, which are within the boundary of the 41.92 acre parcel. So far as is disclosed by the abstract, the Hawley heirs had no title to lots 14, 16, 22 and 34.

4. The taxes for 1927, amount yet undetermined, are unpaid and a lien.

I am informed that it will be possible to secure affidavits in support of a prescriptive title in the second parcel of Tract No. 16 in the Votaws on account of open and adverse possession for a period of forty years or more, and in view of what has been said above with reference to this parcel, it is my suggestion that such affidavits be obtained.

I am returning herewith the abstract of title covering both of the above parcels, the encumbrance estimate, deed and other papers.

Respectfully,
EDWARD C. TURNER,
Attorney General.

636.

GUILFORD LAKE PARK—ACT OF MARCH 24, 1925—INTERPRETATION OF WORD "PURCHASE"—COST OF CONDEMNATION PROCEEDINGS.

SYLLABUS:

1. *Where in the Act of March 24, 1925, (111 O. L. 100) the legislature in authorizing the Director of Highways and Public Works to acquire real estate for the establishing of a state park and pleasure resort to be known as "Guilford Lake" used the word "purchase," it is presumed that the legislature used said word with full knowledge of the provisions of Section 472, General Code, and the word "purchase" as used in said act, includes the power to accept said real estate or any part thereof as a gift or to condemn the same.*

2. *The value of the real estate and the costs of the condemnation proceedings may be paid out of the fund appropriated by the legislature for the purpose of pur-*

chasing said real estate, as provided in Section 472, General Code. Where there is a balance in such fund otherwise unencumbered and where it is necessary to bring condemnation proceedings to acquire certain parcels of said real estate, said balance may be divided among said parcels in proportion to their acreage for the purpose of paying for said parcels and the costs of the proceedings and encumbrance estimates may be certified accordingly.

COLUMBUS, OHIO, June 20, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for opinion under date of June 14, 1927, which reads as follows:

“The 86th General Assembly appropriated thirty-two thousand five hundred (\$32,500.00) dollars, to the division of public works, for the purchase of lands in Hanover township, Columbiana county, Ohio, for the purpose of establishing a State Park to be known as ‘Guilford Lake Park.’

Owing to the many defects in the abstracts submitted by the owners, the division of public works has been unable to acquire any of these lands. Abstracts have now been completed, so that all but the minor defects in the same have been eliminated. The abstracters are now clearing up the items in the abstracts, so that purchases can be made for all but three or four tracts.

Three tracts, it now appears, will have to be appropriated under the statutes authorizing the superintendent of public works to acquire lands for canal and reservoir park purposes. All of the appropriation has been encumbered excepting nine hundred and thirty-eight dollars and sixty (\$938.60) cents.

In case that we are compelled to commence litigation to acquire these tracts, we have no funds with which to pay the court costs, and we are asking you whether or not we may encumber this \$938.60 as a probable cost that will be involved in this litigation.

All expenses of appropriation will fall on the state under the provisions of Section 412-1 et seq. or 442 of the General Code.

Section 4 of the Act providing for the establishment of a state park and pleasure resort to be known as Guilford Lake, carried an appropriation “For the use of the Director of Highways and Public Works in making the purchase of the site and lands in carrying out the provisions of this act, there is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated, the sum of thirty-two thousand five hundred (\$32,500.00) dollars.” (See O. L. 111, P. 100).

As the time is short before this appropriation expires, we will appreciate an early opinion.”

I am informed that the appropriation of \$32,500.00 is based upon the estimated purchase of five hundred acres of land at \$65.00 per acre; that the amount of land which it is proposed to purchase is about 486 acres and that all of the land owners whose land it is proposed to purchase have agreed to sell the same to the state at a price of \$65.00 per acre, except the three referred to in your letter, the total acreage of the three tracts being about 76.19 acres.

Authority to acquire land for the purpose of establishing a state park to be known as “Guilford Lake” is found in an act of the 86th General Assembly passed

March 24, 1925, (111 O. L. 100) entitled "An act to provide for the establishment of state park and pleasure resort to be known as 'Guilford Lake'." Section 1 of that act reads as follows:

"The director of highways and public works is authorized to purchase the site of the abandoned lake and reservoir of the Sandy and Beaver canal, located in Hanover township, Columbiana county, Ohio, commonly known as the 'Guilford dam' and such additional lands contiguous to such lake site to constitute not more than a total of five hundred acres, including the lake and additional lands, and when so purchased to be a state park and pleasure resort to be known as 'Guilford lake.' A part of such additional lands to such lake site shall constitute a berm of at least fifty feet in width entirely surrounding such lake.

The Attorney General shall prepare the forms of such deeds necessary to pass title to the state of Ohio, for such site and lands and approve the title and transfer before acceptance and payment."

Section 2 provides in part:

"When such lands are acquired by the state they are hereby dedicated and forever set aside as a public park and pleasure resort for the free use of the public and all the laws applying to state parks and pleasure resorts shall apply to Guilford lake after the purchase has been completed."

Section 4 of the act provides:

"For the use of the director of highways and public works in making the purchase of the site and lands in carrying out the provisions of this act, there is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund, and not otherwise appropriated the sum of thirty-two thousand five hundred dollars."

Section 472, General Code, provides in part:

" * * * And said superintendent may, subject to the approval of the attorney general, acquire by gift, purchase or by appropriation proceedings, on behalf of the state, such real and personal property, rights and privileges as may be necessary in his judgment for the use, extension, enlargement and maintenance of such public parks and resorts, and for new public parks, resorts, reservoirs, channels, drives, roadways, docks, dams, landings, wharves and other improvements.

The legislature in passing an act such as the act of March 24, 1925, supra, is presumed to do so with full knowledge of all the other provisions of law relating to the same or similar subjects at the time of the passage of such act. While, therefore, the legislature in giving authority to the director of highways and public works to acquire land for the establishing of Guilford Lake Park used the word "purchase" it must be presumed that it had in mind the provisions of Section 472, supra, and that the word "purchase" is not to be confined to its narrow meaning but also includes the acquisition of the real estate in question by gift or by condemnation proceedings.

The word "purchase" is defined by Webster's Dictionary as follows:

"Law. Technically, the acquisition of lands or tenements by any means other than descent or inheritance."

No one would contend that if any of the real estate were deeded to the state as a gift or were devised to the state by will, the same could not be accepted because by the provisions of the act of March 24, 1925, the director of highways and public works is authorized to purchase the real estate.

Since the director of highways and public works has, under the provisions of general law, the power to condemn land for precisely similar purposes it must be presumed that the legislature in using the word "purchase" in the act of March 24, 1925, used the same in its broad sense and that the word "purchase" as used in the act in question was used as synonymous with the word "acquire" and includes the power to receive by gift or to condemn.

In your letter you state that all of the appropriation has been encumbered except the sum of \$938.60. In view of the fact that the original appropriation contemplated the purchase of not to exceed five hundred acres and the appropriation was made upon the basis of the estimated purchase of such five hundred acres and the further fact that the state desires to purchase only some four hundred and eighty-six acres, I assume that the \$938.60 represents the amount appropriated by the legislature for the purchase of the fourteen acres, more or less, representing the difference between the five hundred acres authorized by the legislature to be purchased and the four hundred and eighty-six acres which it is actually desired to purchase.

Section 472, General Code, contains among others the following provision:

"The value of such real or personal property, together with the cost of appropriation, where appropriation proceedings are necessary, shall be paid out of the funds derived from the sale of special privileges and from leases of state lands in and adjacent to the parks or pleasure resorts for which such purchase or appropriation is made, or when such costs exceed one thousand dollars, then out of moneys in the general revenue fund appropriated for such purposes, but no expense for these purposes shall be incurred until the general assembly has first appropriated the money therefor."

The legislature has appropriated funds for the purchase of the land for Guilford Lake Park and in my opinion under the provisions of Section 472, supra, the costs of the appropriation proceedings are properly payable out of the funds so appropriated.

In view of the fact that it is impossible to determine what the verdict of the jury in the appropriation proceeding would be as to the value of the land appropriated and in view of the fact that it is impossible to estimate the costs of the proceedings at this time it is my suggestion that in addition to the encumbrance estimate already certified based upon the estimated cost of the three tracts at \$65.00 per acre, the amount of the fund at present unencumbered, to wit, the sum of \$938.60, be divided among the three tracts in proportion to their acreage and that encumbrance estimates be certified accordingly.

Incidentally, your attention is directed to the fact that the act of the legislature above referred to (111 O. L. 100) was filed in the office of the Secretary of State on the 10th day of April, 1925, and became effective on the 9th day of July, 1925.

Section 22 of Article II of the Ohio Constitution, provides:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

Accordingly, any part of the sum of \$32,500.00 appropriated by the act above referred to, which has not been properly encumbered prior to July 9, 1927, will lapse on that date.

Respectfully,
EDWARD C. TURNER,
Attorney General.

637.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE WALSH ELECTRIC COMPANY, ATHENS, OHIO, FOR ELECTRICAL CONTRACT FOR AUDITORIUM BUILDING, OHIO UNIVERSITY, ATHENS, OHIO, AT AN EXPENDITURE OF \$15,775.00—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

COLUMBUS, OHIO, June 20, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the state of Ohio, acting by the department of highways and public works, for and on behalf of the board of trustees of Ohio University, Athens, Ohio, and the Walsh Electric Company, Athens, Ohio. This contract covers the construction and completion of the electrical contract for the Auditorium Building on the campus of the Ohio University, and calls for an expenditure of fifteen thousand seven hundred and seventy-five dollars (\$15,775.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a contract bond upon which the United States Fidelity and Guaranty Company appears as surety sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans and specifications were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.