

1116	Carlos A. Hall, Morgan County, Morgan Township-----	111
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1118	Sarah O. George, Van Wert County, York Township-----	186
1123	Joseph M. Rieger, Henry County, Liberty Township-----	40

I have examined said leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2308.

APPROVAL, ABSTRACT OF TITLE TO LAND OF B. D. NICOLA, FOR
HAWTHORNDEN FARM, CLEVELAND STATE HOSPITAL, CLEVELAND,
CUYAHOGA COUNTY, OHIO.

COLUMBUS, OHIO, July 2, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion an abstract of title pertaining to certain real estate situated in Bedford Township, Cuyahoga County, Ohio, which the State of Ohio proposes to purchase from B. D. Nicola, for the Hawthornden farm of the Cleveland State Hospital. The abstract was prepared by The Cuyahoga Abstract Title and Trust Company, Cleveland, Ohio, bears the certification of said abstractor as of May 28, 1928, and covers the following described real estate situated in the Township of Bedford, County of Cuyahoga and State of Ohio, and known as being part of Original Bedford Township Lot No. 92, and bounded and described as follows:

Beginning at an iron monument in the center line of Sagamore Road at the Southwesterly corner of said Original Lot No. 92; thence North 00° 01' 23" West along the Westerly line of said Original Lot No. 92, 1033.02 feet to an iron monument in the Southerly line of land conveyed to Alma M. Templeton and Elsie H. Rada by deed recorded in Volume 3275, Page 461 of Cuyahoga County Records; thence along the Southerly line of land conveyed to Templeton and Rada as aforesaid to the right-of-way of The L. E. and P. R. R. by the following courses and distances; North 47° 04' 15" East 368.25 feet to an iron monument; North 28° 04' 15" East 270.60 feet to an iron monument; South 78° 25' 45" East 248.82 feet to an iron monument; North 40° 04' 15" East 178.20 feet to an iron monument; South 76° 55' 45" East 594.00 feet to an iron monument; North 26° 34' 15" East 198.00 feet to an iron monument; North 50° 19' 30" East 86.36 feet to the Westerly right-of-way line of The L. E. and P. R. R. which line is distant 60 feet at right angles from the center line of said right-of-way; thence South 12° 06' 25" West along said Westerly right-of-way line of The L. E. and P. R. R. 862.49 feet; thence South 77° 53' 35" East at right angles to said right-of-way, 10 feet to a point which is distant 50 feet Westerly at right angles from the center line of said right-of-way; thence South 12° 06' 25" West along said Westerly

right-of-way line, 900.15 feet to its intersection with the center line of Sagamore Road from which point an iron monument at the intersection of said center line of Sagamore Road and the center line of the right-of-way of The L. E. and P. R. R. bears South 89° 03' 35" East 50.97 feet; thence from said intersection with the Westerly right-of-way line, North 89° 03' 35" West in said center line of Sagamore Road, 1128.91 feet to the place of beginning and containing 43.198 acres of land according to survey by The Lander Engineering Company, dated May 28, 1928, be the same more or less, but subject to all legal highways.

Upon examination of said abstract, I am of the opinion that the same shows a good and merchantable title to the real estate described in B. D. Nicola, subject to the following:

1. An oil and gas lease made to John B. Chapman by John Christ and Arnold Steverding, as executors and trustees of Val Christ, deceased, under date of December 5, 1911, for a term of five (5) years and as long thereafter as oil or gas is produced from the premises in paying quantities. This lease remains uncanceled of record but is referred to by a letter from B. D. Nicola dated June 16, 1928, with the observation that the lease was executed by the executors and trustees of Val Christ, deceased, without any authority from the court and that the five year period mentioned in the lease has expired and no gas or oil well exists on the premises. Assuming the correctness of the above statements, it is my opinion that the oil and gas lease having been made without court authority, and there having been no operations under said lease, the same may be disregarded.

2. A right of way for pipe line purposes granted to The East Ohio Gas Company by John Christ and Arnold Steverding, executors and trustees under the will of Valentine Christ, deceased, under date of February 15, 1913, granting to the Gas Company the right to lay, maintain, operate and remove a pipe line for the transportation of oil or gas on, over and through the Westerly end of the land as well as through the other parts of the farm which the state already owns. Before purchasing the property it should be determined by you that the existence of the above grant of right of way will not interfere with the use of the property by the state.

3. At Section 73 of the abstract there is shown a partition suit, in which John Christ was plaintiff and Agnes Hienke and others were defendants. Among the defendants named were Vincent Christ and Isadore Christ, minors, and Arthur Christ, as Guardian of said minors. It appears that both the minors and the Guardian waived service of summons and entered their appearance, and it does not appear that a Guardian Ad Litem was appointed to protect the interests of the minors during the pendency of the partition proceedings. While the failure to serve the minors and Guardian personally and appoint a Guardian Ad Litem raises a serious question as to the validity of the proceedings, in so far as the minors' interests are concerned, the objection may be waived if it appears that on coming of age the minors have accepted the property or money set off to them in the partition proceedings or have otherwise accepted the benefits of the same. Such acceptance may be evidenced by sale of any real estate set off to the minors after they became of age, by acceptance of any money resulting from the sale of such property upon their coming of age or by the acceptance of any rents or other income from said property.

4. At Section 77 there is shown a deed from Joseph F. Sawicki to Elizabeth V. Sawicki, dated March 14, 1914. This deed does not show whether or not Joseph F. Sawicki was married at the time of the execution thereof but the following section (Section 78) shows a mortgage from Elizabeth V. Sawicki and Joseph F. Sawicki, her husband, to Max P. Goodman, Trustee. Apparently Joseph F. Sawicki and

Elizabeth V. Sawicki were husband and wife. If such be the fact, in view of the fact that the transaction is rather recent an affidavit to that effect should be obtained.

5. At Section 110 there is shown a mortgage from William J. O'Brien to Elizabeth V. Sawicki and The Cleveland Trust Company, Trustee, dated May 14, 1926, the consideration stated being the sum of ten thousand (\$10,000.00) dollars. The following Section (Section 111), shows an assignment by Elizabeth V. Sawicki of her interest in the mortgage to Gaetano Geraci, under date of September 17, 1927. This mortgage is still uncanceled of record and it appears from the letter of B. D. Nicola above referred to that the same will be paid off out of the purchase price of the above real estate and cancelled. In closing the transaction you should see that the mortgage is paid and the cancellation of the same placed on record.

6. The taxes for the year 1927, shown by the abstract to be a lien, have been paid, as evidenced by the tax receipt submitted by Mr. Nicola. However, the taxes for the year 1928 and any assessments that may have been levied against the property are now a lien and will, I assume, be adjusted at the time of closing the transaction.

You have also submitted a warranty deed from Benjamin D. Nicola to the State of Ohio, its successors and assigns, covering the real estate above mentioned, in which Harriet S. Nicola, wife of Benjamin D. Nicola, releases dower. The deed contains a warranty in general form that the property is free from all encumbrances, but excepts the taxes for 1928, and thereafter, and further excepts the oil and gas lease referred to in (1) above and the right of way referred to in (2) above. In view of Mr. Nicola's positive statements with reference to the oil and gas lease, it seems to me that he should have no objection to warranting the property against said lease, and the reference thereto in the deed should therefore be omitted. With the exception of the above suggestion, I find the deed in proper legal form and that when the same is properly executed and delivered it will convey a fee simple title to the State of Ohio.

No encumbrance estimate has been submitted and I am therefore unable to render an opinion on the same.

I am returning the abstract of title, deed and all other papers submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2309.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE KAUFFMAN-LATTIMER COMPANY, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF SOAPSTONE FOR NEW CHEMISTRY BUILDING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$8,572.30—SURETY BOND EXECUTED BY THE COMMERCIAL CASUALTY INSURANCE COMPANY.

COLUMBUS, OHIO, July 2, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works for the Board of Trustees of Ohio State University, and The Kauffman-Lattimer Company, of Columbus, Ohio. This