

The summary reads as follows:

"The purpose of this Petition is to secure legislation whereby all branch or affiliated stores shall be taxed in proportion to the number of stores operated by any one organization within the limits of the State of Ohio, beginning with \$5.00 annual tax for the first place of business and in doubling the rate for each successive place of business to the tenth place of business, whose tax shall be \$2500.00; and thereafter the tax shall be \$2500.00 per store, which amount shall be the basis of taxation for all stores belonging to such organization operated within the State of Ohio regardless of the number of store units. And each such branch or affiliated store shall be licensed before it shall be lawful for it to operate. Any such license issued prior to July 15th of any year shall be subject to the payment of the tax for the full calendar year. Any such license issued on and after July 15th shall be subject to the payment of one-half the tax for the calendar year."

It will be seen that the summary states that the proposed law provides for an annual tax, whereas the proposed law provides for a license fee. Nowhere in the proposed law is the charge to be imposed termed a tax, although the license fee in question would perhaps amount to a tax rather than a license fee. I suggest that the language used in the proposed law be used in the summary. There is no reference in the summary to any provisions contained in section 8, 10 and 11. I suggest therefore that the summary include a synopsis of the provisions of these sections.

For the above reason, I am unable at this time to find that the summary is a fair and truthful statement of the proposed law.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4232.

APPROVAL, ABSTRACT OF TITLE TO LAND IN HANOVER TOWNSHIP,
ASHLAND COUNTY, OHIO—CORA BOOKMAN.

COLUMBUS, OHIO, May 6, 1935.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval, an abstract of title of a tract of land owned by one Cora Bookman, in Hanover Township, Ashland County, Ohio. This tract of land is in the northeast quarter of the southwest quarter of Section 16, Township 19, Range 16, in said county and civil township, and is more particularly described by metes and bounds as follows:

"Beginning at the point where the middle section line which divides the SW and SE quarters of Section 16 crosses the center line of State Highway No. 97, said point being 45.05 feet S 88° 53' E of Station 86 88.34 on said Highway; thence, N 88° 53' W 904.41 feet along the center line of said Highway;

thence N. 1° 35' 14" E 731.17 feet to the middle section line which divides the NW and SW quarters of Section 16; thence S 88° 52' 58" E 920.28 feet along said line to the center of Section 16; thence S 2° 51' 40" W 731.63 feet along the middle section line which divides the SW and the SE quarters of Section 16, to the place of beginning, containing 15.31 acres, and subject to all legal highways."

Upon examination of the abstract of title submitted, which abstract is certified by the abstractor under date of March 1, 1935, I find that Cora Bookman has a good and indefeasible, fee simple title to the above described property and that the same is free and clear of all encumbrances except the undetermined taxes on this property for the year 1935, and except an oil and gas lease hereinafter referred to. The deed form of the deed to be executed by Cora Bookman and by her husband, Howard Bookman, contains a clause reciting that this property is free from all encumbrances whatsoever. I assume from this that the grantors are to pay the taxes which are a lien upon this property. There has been no separate entry of the above described tract of land on the auditor's tax list and duplicate and before the taxes upon this tract of land can be paid or otherwise provided for there will have to be a segregation of the taxes or estimated taxes upon this particular tract of land.

On March 22, 1921, said Cora Bookman and Howard Bookman, her husband, executed an oil and gas lease upon a 70 A. tract of land which included the tract of land here in question. This lease was for a term of ten years and presumably for as much longer as oil and gas might be produced under said lease. In any event it appears that thereafter under date of June 1, 1929, the Logan Gas Company assigned and transferred its rights under this lease to the Ohio Fuel Gas Company and that there are two or more gas wells upon the 70 A. tract of land covered by the lease. Whether these gas wells or either of them are upon the smaller tract of land above described, is not shown by the abstract. Neither does it otherwise appear whether this lease or the developments under the same will in any wise interfere with the use which you desire to make of these premises.

In this connection I might further note that under date of August 9, 1876 one Sylvester Fisher who then owned and held the 70 A. tract of land of which the land here in question was a part, executed a written instrument in the form of a lease to the board of education of Hanover township. By this instrument, school children attending the school in District No. 4 in Hanover Township were given the right to use eight feet off the east side of these lands, as a way to be used by these school children in going to and from this school. This instrument although in the form of a lease, was not for any definite term, and it is altogether probable that said lease and the rights of the board of education thereunder have been abandoned. It is suggested, however, that before the transaction for the purchase of this property is closed that some investigation be made with respect to the status of this instrument, which is found recorded in Volume I, page 271, of the Lease Records of Ashland county.

It appears from the files submitted that Cora Bookman has executed a power of attorney by which one M. H. Spreng is authorized to act as her attorney in fact in the execution of a deed covering the above described property. It appears further that said Cora Bookman has submitted to you a deed form of a deed to be executed conveying this property to the State of Ohio. By this deed form Cora Bookman, Howard Bookman and M. H. Spreng, attorney in fact for Cora Bookman, all appear as grantors in the deed. However, the deed has not yet been executed. Needless to say that before any warrant is issued covering the purchase price of this property this deed should be executed by the grantors and the same should have the approval of this of-

fice. The form of this deed is such that with one correction the same when executed will be legally sufficient to convey this property to the State by fee simple title with a covenant that the property conveyed is free from all encumbrances whatsoever. The property is described in the deed as being in the northwest quarter of the southwest quarter of Section 16 of the township and range above mentioned. It seems quite clear from the plat submitted as well as from the earlier deeds on the chain of title that the property here in question is in the northeast quarter of the southwest quarter of Section 16 and the deed form should be corrected accordingly.

Upon examination of Contract Encumbrance Record No. 14, which has been submitted as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance in the proper appropriation account to the credit of the Ohio Agricultural Experiment Station to pay the purchase price of this property, which purchase price is the sum of \$340.00.

I further find from a recital of the fact in the encumbrance record as well as from the certificate of the Controlling Board that said Board has approved the purchase of the above described property and has released from the appropriation account the money necessary to pay the purchase price of the same.

Subject to the exceptions and corrections above noted, and suggested, the abstract of title, deed form, and other files submitted to me are herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4233.

TRUST—DONOR MAY MAKE RESERVATION IN TRUST INSTRUMENT OF RIGHT TO WITHDRAW FOR OWN USE PROPERTY IN THE TRUST.

SYLLABUS:

Although under the common law a reservation in a trust instrument of a right in the donor to withdraw, use and consume in the execution of the trust any or all of the property constituting the principal or corpus of the trust, has the effect of invalidating the trust and of imparting to the relation thus created the character of an agency, such is not the effect of a trust created in this State, under the provisions of section 8617, General Code, as amended by the act of April 29, 1921, 109 O. L., 215, and as construed by the Supreme Court in the case of Union Trust Company vs. Hawkins, 121 O. S., 159; and the relation created by such instrument is a valid trust under the statute, notwithstanding the reservation therein of a right in the donor to withdraw for his own use any or all of the property in the trust.

COLUMBUS, OHIO, May 7, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You recently submitted to me an instrument of indenture executed by and between W. B. of the city of Toledo, Ohio, therein called the "Donor", and The Toledo Trust Company, or its successors, of the city of Toledo, Ohio, therein referred to as the "Trustee". You request my opinion on the question whether, under the pro-