

6247.

DISAPPROVAL—ABSTRACT OF TITLE, ETC., TO LAND IN
FRANKLIN TOWNSHIP, ROSS COUNTY, OHIO—DONALD
McBETH.

COLUMBUS, OHIO, October 26, 1936.

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

DEAR SIR: 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, contract encumbrance record No. 32 and other files relating to the proposed purchase by the Ohio Agricultural Experiment Station, in the name of the State of Ohio, of a 44-acre tract of land which is now owned of record by one Donald McBeth in Franklin Township, Ross County, Ohio.

Upon examination of the abstract of title which has been submitted to me, I find that on and for some time prior to March 22, 1894, and prior to the death of one Lavina Nunley on said date, she owned the tract of land here in question by fee simple title. On April 10, 1897, one Elias Nunley, as administrator of the estate of Lavina Nunley, acting pursuant to an order of the Probate Court of Ross County in proceedings to sell this property to pay debts of the estate, conveyed this tract of land and the fee simple title therein to one William W. Rood, as guardian of Emma E. Evans, a minor. On February 12, 1898, William W. Rood, as guardian of Emma E. Evans, conveyed this tract of land by full fee simple title to his ward, it appearing that she had at that time attained her majority. Thereafter, this property having become delinquent by reason of the non-payment of taxes thereon in the amount of \$2.66, the property was on January 16, 1900, sold on delinquent land tax sale to one Myron Evans. This land tax sale was one made under the then provisions of section 5704, et seq., General Code; and although it may be presumed that the purchaser received at that time a certificate of purchase of this tract of land, it does not appear that after the lapse of two years from the date of this sale the County Auditor executed a deed to the above named purchaser for the tract of land theretofore sold at the land tax sale, as then provided for by section 5717, General Code. It is quite clear under the statutory provisions then governing the sale of lands for delinquent taxes thereon, that the sale of this land to Myron Evans at a delinquent land tax sale conducted by the County Treasurer in the manner then provided by sections 5711 and 5712, General Code, did not vest the legal title to this property in Myron Evans as the purchaser thereof or as the holder of the certificate of purchase as to such lands. All that Myron Evans, as

purchaser of this property, obtained by this purchase was the right to be invested with the title to the land at the expiration of two years from the sale thereof to him if the property was not redeemed in the meantime. *State, ex rel., v. Godfrey*, 62 O. S., 18. Aside from a decree of a court of competent jurisdiction in a proper case, the only way in which he might obtain the legal title to this property was by deed from the County Auditor in the manner provided by section 5717, General Code.

As above noted, it does not appear that the County Auditor ever executed a delinquent land tax deed to Myron Evans as the purchaser of this property at the delinquent land tax sale above referred to or that he as such purchaser was otherwise vested with the title to this property. In this situation as to the title of the property, it further appears that thereafter on July 3, 1929, one T. Ewing Arganbright, as County Treasurer of Ross County, filed an action in the Common Pleas Court of Ross County against said Myron Evans and one Evans, his wife, on a tax title certificate and that pursuant to an order of the court in this case the Sheriff of Ross County sold this tract of land to Donald McBeth. However, it does not appear that Emma E. Evans was made a party to this proceeding and her rights in the property were not thereby foreclosed.

Upon the facts above state, I am not able to approve the title of Donald McBeth in and to the same without a showing of fact by affidavit or otherwise that Donald McBeth and Myron Evans before him held this land by such open and adverse possession as to bar the assertion of any legal rights which Emma E. Evans may now have in the land. I am, therefore, returning the abstract of title, warranty deed, contract encumbrance record No. 32 and other files pertaining to the purchase of this property.

Respectfully,

JOHN W. BRICKER,
Attorney General.