

fishing grounds, and to that end to improve the waters or water courses passing through and over said land.

Upon examination of the above instrument, I find that the same has been executed and acknowledged by the grantor in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, which is herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2794.

DISAPPROVAL—ABSTRACT OF TITLE, WARRANTY DEED AND CONTRACT, TRACT OF LAND, BRUSH CREEK TOWNSHIP, HIGHLAND COUNTY, OHIO, ACCOUNT NO CONSIDERATION SPECIFIED AND OTHER OMISSIONS.

COLUMBUS, OHIO, August 2, 1938.

The Ohio State Archacological and Historical Society, The Ohio State Museum Building, Columbus, Ohio.

GENTLEMEN: You have submitted for my examination and approval an abstract of title, warranty deed and contract encumbrance record No. 11 relating to a tract of land which is owned of record by one J. P. Mechlin of Winchester, Ohio, which tract of land is located in Brush Creek Township, Highland County, Ohio, is a part of Bayles Survey No. 3167 V. M. S., Entry No. 1619, and is bounded and described as follows, to wit:

Beginning at an ash in Sulphur Springs Hollow, corner to Mary Ann Eastons Tract of land in the original line of Bayles Survey;

Thence North 45° West 138 poles to a hickory, maple and chestnut, the original corner of the survey;

Thence with another of the original survey lines S. 45° West 183 poles to a white oak and two blue ashes on top of Fort Hill and corner to S. S. Rhodes;

Thence with his line South 45° East 105 poles to two maples another corner to H and D. S. Rhodes;

Thence South 45° West 172 poles crossing the creek to two white walnuts on the West side of the creek;

Thence down on the West side of the creek with the meanderings thereof S. 1° West 47 poles; South 8° West 10

poles to a horn beam; thence South 15° E 48 poles to three Lynns; South 56° W. 16 poles; South 15° W. 20 poles; South 10° East 10 poles; South 15° West 12 poles to a white walnut and two iron woods on the top of the cliff and in the line of the original survey of which this is a part; thence with said line S. 45° East 10 poles crossing the creek at six poles;

Thence North 45° East 230 poles to a stone;

Thence North 17° W. 24 poles to a double elm;

Thence North 51° 50' East 10 poles to a stone; thence North 5° 15' West 64 poles to a stone planted at the root of a poplar tree;

Thence North 17° West 28 and 2/5th poles to a stone on the edge of a small branch;

Thence 45° East 149 poles to the beginning, containing 294 acres of land more or less, and being the same premises conveyed to J. P. Mechlin by H. H. Mechlin by deed dated July 2nd, 1928 and recorded in Highland County record of deeds Vol. 138 page 411.

Upon examination of the abstract of title which is certified by the abstracter under date of April 14, 1938, I find that said J. P. Mechlin has a good merchantable fee simple title to the above described tract of land, and that he owns and holds the same free and clear of all encumbrances except the following liens which are here noted as exceptions to the title in and by which said J. P. Mechlin owns and holds this land:

1. On May 17, 1928, one H. H. Mechlin, who then owned and held the fee simple title to the above described tract of land, executed a mortgage on this property to The Winchester Bank of Winchester, Ohio, to secure the payment of a promissory note, apparently of even date therewith, in the sum of \$4,000.00. This mortgage is not satisfied of record. And when H. H. Mechlin conveyed this property to J. P. Mechlin under date of July 2, 1928, it was provided in the deed of conveyance that J. P. Mechlin, the grantee in said deed, assumed and agreed to pay this mortgage. In any view, this mortgage is a lien upon the above described property to the extent of the amount of money remaining unpaid on the note or other obligation secured by this mortgage, and of the accrued and unpaid interest on this obligation. Provision should, of course, be made for the payment and satisfaction of this mortgage before or at the time the transaction is closed for the purchase of this property by the issue of warrant or warrants covering the purchase price thereof.

2. It appears from the abstract of title that delinquent taxes have

accumulated on this property for the years prior to the year 1937 in the amount of \$245.47, which taxes, together with any assessed penalties thereon, are a lien on this property. It appears further in this connection that the taxes on this property for the first half of the year 1937, amounting to the sum of \$39.12, and likewise taxes on the property for the second half of the year 1937, amounting to \$39.12, are unpaid and are a lien upon the property. The taxes on this property for the year 1938 are a lien on this property. The amount of such taxes are, of course, undetermined; but it is thought that such taxes will be approximately of the same amount as those of the year 1937, to wit, the sum of \$78.24. Needless to say, provision should likewise be made for the payment and satisfaction of the taxes above noted at the time you close the transaction for the purchase of this property.

In this connection, it has been noted herein that this abstract of title was certified by the abstracter under date of April 14, 1938. In view of the time that has elapsed since the certification of this abstract, it is suggested that before any voucher or warrant is issued for the purchase of this property, a further examination of the records in the proper public offices of Highland County be made to determine whether or not since the date of said certification any encumbrances of any kind have been imposed on this property by any act of the owner of the property or otherwise.

Upon examination of the warranty deed tendered by said J. P. Mechlin, I find that I am unable to approve said deed for the reason that the same does not conform to the rule of this office and that of the Auditor of State which requires the full amount of the consideration to be stated in all deeds conveying property to the State of Ohio where such deeds are executed on a consideration of money paid or to be paid to the grantor. In this case, it appears that the actual consideration of this deed is the sum of \$16,972.75; and this is the amount which should appear as the recited consideration in the deed. Furthermore, it is suggested and advised that all reference to the Board of Trustees of The Ohio State Archaeological and Historical Society be deleted from the deed. This requires the elimination from the deed in the form as the same has been tendered by said grantor of the words "by and through the Board of Trustees of The Ohio State Archaeological and Historical Society," wherever such words appear in said deed. In other words, this is a conveyance of lands to the State of Ohio in consideration of a certain amount of money to be paid by the State of Ohio and this is all that should appear in the deed. When this deed has been corrected in the manner as above indicated, the same should be again submitted to this office for approval.

Upon examination of contract encumbrance record No. 11, I find

that the same has been properly executed and that there is shown thereby a sufficient balance in the appropriation account set up under Amended Senate Bill No. 460 to pay the purchase price of this property, which purchase price is the sum of \$16,972.75. I am herewith returning for your further consideration said abstract of title, warranty deed and contract encumbrance record.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2795.

COUNTY COMMISSIONERS—HAVE AUTHORITY TO ALLOW CLAIM FOR DAMAGES TO OWNER OF SHEEP INJURED OR KILLED BY DOGS—NOTICE OF INJURY OR LOSS MUST BE GIVEN WITHIN FORTY-EIGHT HOURS AFTER DISCOVERED.

SYLLABUS:

It is within the authority given in Section 5840, et seq. of the General Code, for county commissioners to allow a claim for damages to an owner of sheep injured or killed by dogs if notice of the injury or loss is given within forty-eight hours after being discovered.

COLUMBUS, OHIO, August 3, 1938.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication wherein you request my opinion on the following:

“‘A’ was the owner of a flock of sheep which was attacked by dogs and within forty-eight hours the County Commissioners were notified and an appraisalment made. After the lapse of the forty-eight hours and before the elapse of sixty days, additional injuries were discovered in said flock, caused by said dogs, which injuries were not apparent at the time the appraisalment was made.

Can the County Commissioners, under Section 5840, et seq., pay for the additional injuries which were not discovered within the forty-eight hour period?”

Section 5840 of the General Code provides as follows: