

1254

DISAPPROVAL—ABSTRACT OF TITLE, WARRANTY DEED,
AND CONTRACT ENCUMBRANCE RECORD RELATING
TO THE PROPOSED PURCHASE OF TWO TRACTS OF
LAND IN VILLAGE OF LEETONIA, COLUMBIANA,
COUNTY, OHIO.

COLUMBUS, OHIO, September 29, 1937.

HON. JOHN JASTERS, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You recently submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 1605 and other files relating to the proposed purchase from one I. Koch of two certain tracts of land in the village of Leetonia, Columbiana County, Ohio which tracts of land are more particularly described by metes and bounds in the warranty deed above referred to which has been tendered to the state of Ohio through your department.

Upon examination of the abstract of title which is in the short form going back only to the year 1907 for the first conveyance of any part of the property described in said deed, I find that I am unable to approve the title to this property upon the abstract submitted for the following reasons:

1. Included in the second tract of the property described in the deed which has been executed by I. Koch and wife and which has been tendered to the State, is a smaller tract sometimes referred to in the abstract of title as consisting of 1.98 acres and designated on the accompanying blue print as 1.998 acres. The original source of title with respect to this tract of land last above referred to is, so far as the same is disclosed by the abstract, a deed executed by O. G. Stiver, et al., heirs at law of one F. B. Stiver, deceased, conveying to Charles S. Thrasher, Trustee, the undivided 31/36 interest of the grantors in and to a tract of land described in their deed as follows:

Fourth Tract:—Being situated in the village of Leetonia, County and State aforesaid and known as and being described as follows: Bounded on the North by the South line of lots number 256, 257, 258, 259 and 260 as the same are renumbered on the plat of said village, on the East by Mill street, as now occupied, on the South by the North line of Stoy Street, on the West by the East line of lots number 469,

470 and 513 as the same are renumbered on the plat of said village, excepting a strip of land 40 feet wide and extending from the West line of Mill Street on the East to the East line of lot number 513 on the West the North line of said strip of land being the South line of Stiver alley, also-excepting a piece of land in the Southeast corner of said tract of land 100 feet square and also excepting all streets and alleys that have been dedicated to the village of Leetonia, Ohio.

As above noted, this deed purported to convey to Charles S. Thrasher, Trustee, only a $\frac{31}{36}$ interest in and to the property therein described, it appearing that there was at the time an outstanding $\frac{1}{36}$ interest in one Josephine Brickman, a minor, and a $\frac{4}{36}$ interest therein in one John Stiver, a minor. There is nothing in the abstract of title to show that the interests of these minors were ever acquired by Charles B. Thrasher, Trustee, or thereafter by The Youngstown and Ohio River Railroad Company.

2. It will be noted that in the deed above referred to from O. C. Stiver, et al., to Charles S. Thrasher, Trustee, there was excepted from the parcel of land therein described a strip of land forty feet wide off the north side of the parcel, which excepted strip of land extended from Mill Street on the east to Lot 513 on the west and which had the south line of Stiver Alley for its north boundary line. There is nothing in the abstract to show that the title to this excepted strip of land was at any time thereafter acquired by said Charles S. Thrasher or by The Youngstown and Ohio River Railroad Company.

3. All of the other property described in the deed tendered by Mr. Koch to the State first appears in the chain of title as the same is set out in this abstract, in a deed executed by one Charles S. Thrasher, Trustee, to The Youngstown and Ohio River Railroad Company. Inasmuch as obviously Charles S. Thrasher was acting for the railroad company in the acquisition of this property and in the conveyance of the same to the railroad company, the abstract of title should be extended and corrected to show how Charles S. Thrasher obtained title to this property.

4. The abstract of title sets out a deed executed by William H. Dickinson and Sarah A. Dickinson, his wife, Endora McIntyre and Elmer G. McIntyre, her husband, Margaret Dickinson and V. L. Dickinson to The Youngstown and Ohio River Railroad Company. This deed, which was executed under date of October 13, 1910, is a quit claim deed. The objection to this deed as it appears in this abstract is that from the standpoint of an examiner of the abstract it is meaningless for the reason that there is nothing in the abstract of title to show why the deed

was executed. This abstract should be extended and corrected so as to show that interest the above named grantors had or claimed to have in the property conveyed by this deed.

5. In the case filed by *The Union Trust Company, Trustee, vs. The Youngstown and Ohio River Railroad Company, et al.*, to foreclose the mortgage securing an issue of bonds upon the property of the railroad company, there is no description of the property of the railroad company in the petition filed in this case, as the same is abstracted, as is sufficient to identify the property described in the deed tendered to the state as property then owned by said railroad company and included in the foreclosure proceedings.

6. Among the parties defendant in this foreclosure case were James Young and Helen Young, minors. Although they were apparently served with summons by leaving a copy thereof at their usual place of residence, the proceedings were apparently defective so far as these minors were concerned by reason of the fact that no guardian ad litem was appointed to take care of their interests in the case as required by section 11252, General Code.

7. The deed executed by J. D. Dewees, Special Master, appointed in said foreclosure proceedings in and by which property of the railroad company was conveyed to Brigg & Turivas, Inc., under date of March 9, 1931, does not, as the same is abstracted, show affirmatively that all of the property described in Koch's deed and here under investigation was included in said deed executed by J. D. Dewees, Special Master, to Brigg & Turivas, Inc.

8. Included within the description of the second tract of land, as the same is set out in the deed executed by I. Koch and wife, are parcels of land which were formerly parts of streets and alleys in said village, all of which clearly appears from the delineation of this second tract of land within the red lines on the blue print. Although there is a notation on the blue print that Stiver Alley has been vacated, there is nothing in the abstract of title showing the vacation of this alley or of any of the other streets and alleys noted in the blue print as part of the property described in the second tract as the same is set out in this deed. In this connection, it is noted that in the deed executed by Brigg & Turivas, Inc., by L. P. Kulka, Attorney in Fact, to I. Koch under date of June 28, 1935, the parts of said streets and alleys here in question included in the deed tendered to the State, are set out as Tract No. 12 in said deed executed by Brigg & Turivas, Inc., to I. Koch. In said deed the streets and alleys above referred to are referred to as vacated streets and alleys. In this connection, it is noted, however, that no description of these streets and alleys such as is set out as Tract No. 12 in the deed

executed to I. Koch is found in any of the earlier deeds in the chain of title to this property.

In the files submitted to me is a letter addressed by Mr. John S. Pyke, an attorney at law at Cleveland, Ohio, to Mr. Harry Sharp, Division Engineer, New Philadelphia, Ohio. In this communication, Mr. Pyke says:

“As to the streets and alleys located on the property, that portion of Waddle Street, Cherry Alley, Pine Alley, and Stiver Alley have never been dedicated to public use and have never been open to public use and in addition to that, the same were fenced in years ago so that within the purview of Section 11220 of the General Code of Ohio, the easement in these streets and alleys for public purposes, if any, is extinguished except as to owners of the adjacent lots, which in this case will be the State of Ohio.”

It is, perhaps, fair to assume that Mr. Pyke is speaking from acquired or secondhand information with respect to the status of these streets and under the circumstances I am of the view that more definite and direct information should be furnished with respect to the vacation of these streets by formal proceedings for this purpose, if such proceedings were had; or if there were no formal proceedings vacating the streets and alleys here in question, direct information in the way of affidavits executed by persons having knowledge of the facts should be furnished showing that the public easement in these streets and alleys has been lost by limitation of time in the manner provided by section 11220, General Code.

In addition to the specific objections and exceptions above noted to the abstract of title submitted to me, this abstract of title is inadequate both with respect to the compass of time included therein and in the abstract of the conveyances and other proceedings relating to the chain of title to the property here in question. As above noted, the abstract only goes back thirty years. And although this office does not in all cases insist upon an abstract of title which goes back to the time when the United States Government held title to the property abstracted, yet the abstract should in all cases go back far enough so that the abstract as made will be in all respects intelligible and so that it can be definitely known that all outstanding interests with respect to the property in question have been gathered up and passed on in the chain of title indicated in the abstract as prepared.

I am herewith returning said abstract of title, warranty deed, contract encumbrance record and the other files submitted to me in the hope

that a corrected abstract of title obviating the objections above noted may be prepared and submitted to me at an early date.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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STATE CIVIL SERVICE COMMISSION—DESIGNATION CITY
CIVIL SERVICE COMMISSION AS AGENT—DISPOSITION
OF FEES.

SYLLABUS:

When the State Civil Service Commission, under the authority of Section 486-5, General Code, designates the Civil Service Commission of a municipality as its agent for the purpose of conducting examinations for positions in the county civil service, the fees collected from applicants for such positions should be paid into the state treasury to the credit of the general revenue fund and not into the treasury of such municipality.

COLUMBUS, OHIO, September 29, 1937.

*The State Civil Service Commission of Ohio, State Office Building,
Columbus, Ohio.*

GENTLEMEN: I am in receipt of your letter of recent date which is as follows:

“Under the provisions of Section 486-5 of the General Code of Ohio, the State Civil Service Commission has since 1925 designated the Cleveland Civil Service Commission as its agent for the purpose of carrying out the provisions of the Civil Service Laws of Ohio, in all such affairs pertaining to Cuyahoga County.

“Section 486-11 G. C. provides in part that: ‘All fees collected under the provisions of this act shall be paid into the state treasury, to the credit of the general revenue fund, or in the case of cities, into the city treasury.’

“Section 486-1, paragraphs 1 and 2, provides that the state service shall include all such offices and positions in the service