

4147.

APPROVAL, NOTES OF WHITEHOUSE VILLAGE SCHOOL DISTRICT,  
LUCAS COUNTY, OHIO—\$84,385.00.

COLUMBUS, OHIO, March 14, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4148.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DU-  
TIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN TRUMBULL  
COUNTY—R. G. TAYLOR.

COLUMBUS, OHIO, March 15, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

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4149.

APPROVAL, BONDS OF SMITH TOWNSHIP, MAHONING COUNTY,  
OHIO—\$7,000.00.

COLUMBUS, OHIO, March 15, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4150.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF MAUDE B. MAT-  
THEWS AND HARLEY V. MATTHEWS IN HIGHLAND AND PIKE  
COUNTIES.

COLUMBUS, OHIO, March 15, 1932.

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

DEAR SIR:—I am in receipt of your letter submitting for my examination and analysis an abstract of title, copy of real estate option, warranty deed, authority of controlling board and encumbrance estimate No. 804, relating to the proposed purchase of 758 acres of land situated partly in Highland County and partly in Pike County, Ohio, from Maude B. Matthews and Harley V. Matthews, her husband, said tract of land lying on the east side of state highway No. 41 in the

following surveys, namely: Mayo's survey No. 12725 and 12726, Bagby's survey No. 14401, Massie's survey No. 14966, McArthur's survey No. 6798, Handy's survey No. 8970 and Hite's survey No. 9714.

As far as they concern said 758 acre tract, the first twelve pages of the abstract trace the titles of said surveys No. 14966, No. 14401 and No. 12725 and 12726 from the United States government to one Leonard Butler. Very strangely, the abstract then drops said Leonard Butler completely out of sight. The very next conveyance (that on p. 13) is a deed from one John Butler to one Daniel Butler. There is nothing in the abstract to indicate in what manner John Butler received any interest in the land which is the subject of said conveyance, although it is apparent that he is conveying land which once belonged to said Leonard Butler. Likewise, the abstract relates a number of other deeds pertaining to land once owned by said Leonard Butler without showing how the grantors derived title from said Leonard Butler, namely, the deed from Jacob Butler and Emily Butler to Daniel Butler (p. 15, abstract), the deed from Rebecca Spargur to Daniel Butler (p. 14, abstract), the deed from Allen Butler and O. P. Hemstead to Daniel Butler (p. 16, abstract), the deed from Henry Butler and Leonard Butler (who, I understand, is not the original Leonard Butler) to Allen Butler (p. 19, abstract), the deed from John Butler to George W. Butler (p. 25, abstract) and the deed from Rebecca Spargur to Daniel Butler (p. 28, abstract).

It is probable that the foregoing grantors received title in some manner through said Leonard Butler, and, in order that the chain of title may be clearly established, the abstract should be supplemented to show in what manner said Leonard Butler's title fell to said grantors. If an administration was had upon his estate, such proceedings should be related. If the estate of said Leonard Butler did not go through the process of administration, then, by affidavit, a full list of the heirs of said Leonard Butler should be shown. Likewise, the manner in which the interest of each one of the heirs of said Leonard Butler came into the chain of title by which said Maude Matthews claims, should be depicted.

I wish to call to your attention several matters, suggested by the deed from John Butler to Daniel Butler (p. 13, abstract), which call for further investigation and explanation:

1. It is apparent by a reading of the description in said deed that the deed includes land situated in McArthur's survey No. 6798. However, there is nothing in the abstract to show that said grantor, or Leonard Butler or anyone who was a predecessor in Maude Matthew's chain of title, ever received a conveyance for said survey No. 6798. The derivation of the title of said survey should be shown.

2. Call No. 24 in said deed from John Butler to Daniel Butler reads "thence N. 10° W. 269 poles to the beginning". The beginning point of said description is "2 poplars S. E. corner to Nathan Mattox". Said corner where said 2 poplars are located is a point in survey No. 14966 (see p. 9, abstract). Apparently the only reason for the land bounded by said 24th call being in the Butler tract is because it was a part of survey No. 14401 which belonged to Leonard Butler. The call in survey No. 14401 which roughly corresponds to said 24th call in said deed from John Butler to Daniel Butler reads "thence N. 31° W. 200 poles to a sugartree corner to P. P. Mayo's survey No. 12725 and 12726". Thus, it is apparent that the two calls strike at entirely different places and that the description in the deed from John Butler to Daniel Butler includes more territory than is warranted by the description in survey No. 14401. This discrepancy is noted upon a very aged drawing among the drawings and papers submitted by Maude Matthews. This drawing shows what is apparently the erroneous line run by one

Copas and the true line run by one Overman. This error, if it is an error, has been carried down through the years in succeeding conveyances and is found in the proposed deed to the state. Investigation should be made to ascertain where the true line runs.

On August 1, 1878, Henry Butler and Leonard Butler made a conveyance to Allen Butler (p. 19, abstract). The abstract describes the land which was the subject of this conveyance only by referring to certain letters upon a map. This is insufficient, and I would like either to have the description set forth in full or to have the land designated as being the same land conveyed by some other deed represented in the abstract in which the land is fully described by metes and bounds. Moreover, there is nothing in the abstract to show that said Allen Butler ever conveyed away the interest that he received by this deed. This bears further investigation. True, the abstract shows that Allen Butler did at one time make a conveyance of some of the same land to Daniel Butler (p. 16, abstract), but it is to be noted that the latter was a quit claim deed executed on February 25, 1878, prior to the time said Allen Butler received the interest which was conveyed to him by the deed represented on page 19 of the abstract.

The conveyance from John Butler to George W. Butler (p. 25, abstract) indicates that it is an administrator's deed, but there is nothing to show of whose estate the grantor was administrator or by what right he made the conveyance. This should be shown by additional information given by affidavit if it is not revealed by the official county records.

On page 28 of the abstract is found a deed by which Rebecca Spargur conveys to Daniel Butler land which is described as being lots No. 1 and No. 2 in the division of the land of one John Washburn. It is apparent by the map that the land in this deed is located in Handy's survey No. 8970 and Hite's survey No. 9714. The deed indicates that said grantor, Rebecca Spargur, received an interest in said land as one of the heirs of George W. Butler. However, there is nothing in the abstract showing that the United States government ever granted a patent for said surveys or showing how said George W. Butler got title to said land. This should be shown. Furthermore, it should be shown who the heirs of said George W. Butler were.

Maude Matthews claims title to the 758 acre tract by reason of being one of the three heirs of her parents, now deceased, Daniel Butler and Mary A. Butler, and partly by reason of the fact that she has received a conveyance from the other two heirs, her sisters, Blanche Chapman and Bessie L. Butler. A deed executed in 1916 by said Blanche Chapman to Maude B. Matthews and Bessie L. Butler (p. 31, abstract) for a large part of the land in question indicates that there were excepted from the conveyance "103 acres sold to Isaac Stuts and 30 acres sold to John Washburn and wife". There is nothing in the abstract to indicate the location of said 103 and said 30 acre tracts, and information should be furnished to identify said two tracts and to show that they are not located within the boundaries of any of the land now proposed to be conveyed to the state.

Likewise, by a deed dated February 28, 1919, said Bessie L. Butler made a conveyance to said Maude B. Matthews comprising five tracts of land. The fourth tract was lot No. 1 of the Washburn division, but it is stated that there is excepted from it "20½ acres conveyed to G. W. Butler and about 9 acres conveyed to Leonard Butler; 8½ acres conveyed to John Peabody and 3 acres conveyed to Barbara Butler". There is nothing in the abstract to indicate the location of said exceptions, and information should be furnished to show that the land which is

the subject of said exceptions does not fall within the boundaries of the land proposed to be conveyed to the state.

The land in question is subject to four mortgages, all given to the Home Building and Loan Company, totaling \$6,675, and respectively valued at \$675, \$1000, \$3000 and \$2000 (see p. 36, abstract).

Two different abstracters' certificates are given. One, under date of June 19, 1931, made by E. H. Jackson, relates to the Pike County records. The other, under date of March 14, 1931, made by H. P. Morrow and G. W. McDomell, relates to the Highland County records. Only the former certificate mentions taxes, saying that "the taxes due and payable on said premises amount to \$80.02". It will be necessary to furnish a new statement as to the present status of taxes before it can be determined to just what extent the land is encumbered by taxes.

It is suggested that a draft of a new deed to the state be made and that it be typewritten. The old draft of the deed uses the degree and minute marks, thus (°) and ('). These should be written out in full in the newly drafted deed. I note that in the old deed mention of the item of degrees is frequently left out, and that a minute sign is sometimes used where a degree sign should have been used. These matters should be corrected in the newly drafted deed. Attention is also called to the fact that in the deed submitted, the description, beginning with the seventh call, reads:

"Thence N. 25° E. 73 poles to a corner East line of Reed's survey  
800 from which a chestnut grows from the root of an old chestnut stump,  
*thence S. 15 W. 54 poles to a stone.*"

It is to be noted that the phrase "thence S. 15 W. 54 poles to a stone" is inserted as if it were a separate call. Reference to the deed by Blanche Chapman to Maude B. Matthews and Bessie L. Butler (p. 31, abstract) shows that said italicized phrase does not constitute a separate call, but that it merely serves to identify the point mentioned in said Reed's survey by showing the distance and angle it bears to said old chestnut stump. The same error is shown by reference to the deed of Rebecca Spargur to Daniel Butler (p. 27, abstract). This error in the description in the proposed deed to the state should be corrected. Moreover, the use of "36" degrees in the first call of the deed to the state is erroneous and it should be changed to "35" degrees as will be seen by a reference to the deeds on pages 13, 16 and 31.

The corrected encumbrance estimate, No. 804, shows that there remains in the proper appropriation account sufficient money to pay for said land. The authority of the controlling board has been given.

I have not undertaken in this opinion to analyze the title to the tract of land which Maude Matthews owns upon the west side of said state route No. 41.

I am forwarding to you the papers of which I acknowledged receipt above, together with a number of drawings and maps which have subsequently been furnished to me by Maude Matthews.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*