

2667.

APPROVAL, EIGHT GAME REFUGE LEASES.

COLUMBUS, OHIO, October 4, 1928.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter of recent date in which you enclose the following Game Refuge Leases, in duplicate, for my approval:

No.	Lessor.	County.	Township.	Acres.
1149	William H. Young	Montgomery	Madison	149.06
1150	Thomas Davis, et al.	Jackson	Madison	31
1151	William E. Davis	Jackson	Madison	30
1152	William H. Jones	Jackson	Madison	81
1153	David C. Parry	Jackson	Madison	92
1154	J. W. Turner	Jackson	Madison	135
1155	John E. Jones	Jackson	Madison	31
1156	Cora Turner	Jackson	Madison	42

I have examined said leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2668.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF A. H. RICKERT,
NEWARK, LICKING COUNTY, OHIO.

COLUMBUS, OHIO, October 4, 1928.

HON. HARRY J. KIRK, Director of Highways, Columbus, Ohio.

DEAR SIR:—This is to acknowledge receipt of your communication of recent date enclosing abstract of title, warranty deed and other files pertaining to the purchase of certain real property situated in the city of Newark, Licking County, Ohio, and being more particularly described as follows:

FIRST PARCEL: Situated in the City of Newark, County of Licking and State of Ohio. Being one hundred seventeen and one-half (117½) feet off the East side of Outlot "B" in William C. Maholm's Addition to the town of Lockport in said City of Newark, Licking County, Ohio, but saving and excepting therefrom two hundred (200) feet off the north end of said one hundred and seventeen and one-half (117½) foot tract mentioned and described above. Also, there is included herewith an easement or right of way leading from Maholm Street in the City of Newark, in said county and state, South through said excepted part of two hundred (200) feet mentioned above to the premises described above, and said easement is to be free and shall remain free and unobstructed to the public travel and shall be seventeen and one-half (17½) feet in width.

SECOND PARCEL: Being that part of Outlot "C" in William C. Maholm's Addition to Lockport, now City of Newark, lying South and West of a straight line extending from a point in the south line of said outlot twenty (20) feet easterly from the southwest corner thereof, one hundred (100) feet to a point in the west line of said Outlot. Commencing at the southwest corner of said Outlot "C" thence easterly along the south line thereof twenty (20) feet; thence a little west of north one hundred (100) feet to the west line of said Outlot; thence south along the west line thereof, to the place of beginning.

Being the same premises conveyed to The Licking County Building and Savings Company by Sheriff's Deed dated February 11, 1926, and recorded in Volume 276, page 81, Deed Records, Licking County, Ohio.

An examination of the abstract of title submitted, which is certified by the abstractor under date of September 7, 1928, shows that The Licking County Building and Savings Company has a good and merchantable fee simple title to the above described premises and free and clear of all encumbrances, subject to the following exceptions:

(1.) The first exception here noted relates wholly to the first parcel of land above described. This parcel of land is a part of a tract of $117\frac{1}{2}$ feet off of the east side of William C. Maholm's Addition to the Town of Lockport, now in the City of Newark, which said larger parcel of land was on and prior to July 31, 1871, owned by one Benjamin F. Powell. On said date, to-wit: July 31, 1871, the whole of said parcel of land was conveyed to one Hannah Davis, who it appears from recitals in the abstract was a sister of said Benjamin F. Powell. Thereafter, by successive deeds executed on November 7, 1884, and June 29, 1888, said Benjamin F. Powell and Mary J. Powell, his wife, conveyed the same property, to-wit: said $117\frac{1}{2}$ feet off of the east side of Lot "B" of Maholm's Addition, to one Ella Markham, the first of said deeds being to said person by her maiden name, Ella Vogel, and the second of said deeds being to her in her married name, Ella Markham. On February 12, 1904, said Ella Markham and William H. Markham, her husband, conveyed said parcel of land, except 200 feet off the north end thereof, to The Newark Artificial Stone and Plaster Company; and sometime thereafter she conveyed a small parcel of land to one Polly Vogel, description of which land so conveyed is not given in the abstract. Thereafter, on the 23d day of July, 1909, said Ella Markham filed her action in the Common Pleas Court of Licking County, Ohio, against John Davis and Thomas T. Davis, heirs and devisees of Hannah Davis, above mentioned, and in said proceedings obtained an order from said Court quieting the title of said Ella Markham to that part of the original parcel of land conveyed to her by Benjamin F. Powell which she then owned.

The parcel of land sold and conveyed by Ella Markham and husband to The Newark Artificial Stone & Plaster Company later passed by mesne conveyances to The Pickettade Company, an Ohio corporation. Thereafter, this particular parcel of land was sold on foreclosure proceedings to The Licking County Building and Savings Company, which is now the owner of the same, as the second parcel of land above described. It is obvious from the statement above made that the title to this particular parcel of land was not quieted as against the deed executed in the year 1871 by Benjamin F. Powell to his sister, Hannah Davis. It is quite apparent, however, from the abstract of title submitted that this particular parcel of land has been held by said Ella Markham and her successors in interest openly, adversely and under a claim of right since the year 1888, and I am inclined to the view that no rights can at this time be effectually asserted against this property by anyone claiming through or under said

Hanna Davis by reason of the deed executed to her by said Benjamin F. Powell. I am, therefore, of the opinion that this exception to the title of said first parcel of land above described may now be safely waived.

(2). The only other exception noted with respect to the above described property is that the undetermined taxes for the year 1928 are unpaid and are a lien on said premises.

The warranty deed executed by The Licking County Building and Savings Company conveying said parcels of land to the State of Ohio has been properly executed and is in form sufficient to convey to the State of Ohio a fee simple title to said property, free and clear of encumbrances, subject to the following exceptions:

1. The date on which said deed was executed does not appear.
2. The deed does not bear the seal of the corporation.

Neither of the exceptions to the deed above noted affects the validity of the same. It is, however, desirable that the deed be corrected so as to obviate the objections noted.

Encumbrance estimate No. 3182, relating to the purchase of this property, is hereby disapproved, for the reason that the same is made out in the name of one A. H. Rickert, a person other than the owner of the property.

The certificate of the action of the Controlling Board submitted to me shows that the purchase of this property has been approved by the board. Said certificate indicates that the purchase of said property was approved by the Controlling Board under the assumption that the same was owned by said A. H. Rickert above mentioned. However, I am inclined to the view that this misapprehension on the part of the board is not fatal to its action authorizing the purchase of this property.

I am herewith enclosing said abstract of title, warranty deed, encumbrance estimate and certificate of the Controlling Board above referred to.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2669.

OFFICES INCOMPATIBLE—JUDGE OF COURT OF APPEALS AND ACTIVE OFFICER OF OHIO NATIONAL GUARD—CANDIDATE FOR JUDGESHIP MAY BE SUCH AN OFFICER.

SYLLABUS:

By the terms of Section 2251, General Code, a judge of the Court of Appeals is prohibited while holding such position as judge, from being an officer on the active list in the Ohio National Guard. This ineligibility to hold these two offices does not prevent an officer in the National Guard from being a candidate for judge of the Court of Appeals, and if elected to the judgeship, he may qualify for the same upon resigning from his office in the National Guard.

COLUMBUS, OHIO, October 5, 1928.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows: