

Finding said agreement proper as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2698.

APPROVAL, ABSTRACT OF TITLE TO LAND IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, December 19, 1930.

*The State Office Building Commission, Columbus, Ohio.*

GENTLEMEN:—There has been submitted for my examination and approval an abstract of title and an executed deed, relating to certain real property situated in the city of Columbus, Franklin County, Ohio, and which property is more particularly described as follows:

“Being Inlots Numbers One Hundred Eleven (111) and One Hundred Twelve (112) in the city of Columbus, as the same are numbered and delineated upon the recorded plat thereof, of record in Deed Book ‘F’, page 332, Recorder’s Office, Franklin County, Ohio; excepting from said Inlot No. 112 the following described parcel:

Beginning at a point at the northwest corner of said Inlot Number One Hundred and Twelve (112); thence in a southerly direction along the west line of said lot a distance of 31.15 feet to a point; thence in an easterly direction and parallel to the north line of said lot, 45.40 feet to a point; thence in a northerly direction and parallel to the east line of said lot 12.30 feet to a point; thence in an easterly direction and parallel to the north line of said lot 16.70 feet to a point; thence in a northerly direction and parallel to the east line of said lot 17.40 feet to the north line of said lot; thence in a westerly direction along the said north line 52.63 feet to the place of beginning.”

Upon examining the abstract of title submitted to me, I find that the record title to the above described property was acquired by The Columbus Federation of Women’s Clubs, a corporation not for profit incorporated and organized under the laws of the State of Ohio, by several successive deeds of conveyance from the respective owners of several parcels of land, together making up the parcel of land above described. In the case of *Blanche M. Horner, et al., Plaintiffs, vs. Nellie M. Ross, et al., Defendants*, Case No. 110704 in the Common Pleas Court of Franklin County, Ohio, and thereafter in the same case in the Court of Appeals of said county, it was held that The Columbus Federation of Women’s Clubs, an unincorporated voluntary association, is the owner in fee simple of the property above described, and that The Columbus Federation of Women’s Clubs, the corporation above referred to, was a trustee only in its control of said property. In the judgment entered in the Court of Appeals in said case, which was entered under date of January 2, 1929, it was adjudged and decreed that said decree should, from the date of its entry, act as a transfer to the association of the legal and equitable title to said property pending the selection of trustees; and that such trustees when selected shall hold the title for the sole use and benefit of The Columbus Federation of Women’s

Clubs, the unincorporated voluntary association before mentioned. Pursuant to the judgment and decree of the Court of Appeals in said case Stella M. Evans, Annie K. Ray and Marjorie D. Roth were duly elected by said association, The Columbus Federation of Women's Clubs, to hold the title to the property, real and personal, of said association.

I am of the opinion therefore that said Stella M. Evans, Annie K. Ray and Marjorie D. Roth, as trustees of The Columbus Federation of Women's Clubs, the unincorporated voluntary association above referred to, have a good and indefeasible fee simple title to the above described property, subject to the exceptions herein noted as follows:

1. That part of Lot 112 included in said description of the property now owned and held by said trustees aforesaid for the use of The Columbus Federation of Women's Clubs, unincorporated, was acquired by said corporation, The Columbus Federation of Women's Clubs, by conveyance from Fred S. Spring and H. W. Acker and wife by a deed of conveyance under date of November 14, 1923. Upon said Lot 112, so acquired, The Columbus Federation of Women's Clubs, the corporation, executed a mortgage in and for the sum of ten thousand dollars to said Fred S. Spring and H. W. Acker. This mortgage, which was filed for record January 10, 1924, and is found recorded in Mortgage Record 654, page 96, is an apparent lien upon that part of said Lot 112 now owned and held by said trustees for the use of said association, The Columbus Federation of Women's Clubs.

2. On the fifth day of November, 1926, said corporation, The Columbus Federation of Women's Clubs, executed a mortgage to The Columbian Building and Loan Company upon said Inlots 111 and 112 in the sum of two hundred and seventy-five thousand dollars. That part of Lot 112 excepted therefrom in the description of the property here under investigation set out and described in the caption to the abstract and in the deed hereinafter referred to, has been released from the operation of said mortgage, as well as from the operation of the mortgage executed to Fred S. Spring and H. W. Acker noted in the first exception to the title of said trustees above stated. However, said Lot 111, as well as the remainder of said Lot 112 now owned and held by said trustees, is subject to the apparent lien of said mortgage to The Columbian Building and Loan Company to the amount remaining unpaid thereon.

3. On February 28, 1927, one Heber W. Holt filed a mechanic's lien on a claim amounting to one thousand sixty-one dollars and twenty-five cents against said Lots 111 and 112, as a subcontractor furnishing labor to and for one Warren Bland, a contractor, in the erection of a building on said lots contracted for by said corporation, The Columbus Federation of Women's Clubs.

As in the case of the mortgage liens, above noted, a part of Lot 112 had been released from said mechanic's lien; but said mechanic's lien still remains as an apparent lien upon said Lot 111 and upon that part of Lot 112 here under investigation.

4. On August 5, 1927, The L. L. LeVeque Company filed a mechanic's lien on a claim in the amount of thirty-nine thousand three hundred sixty-seven dollars and seventy-eight cents against said Inlots 111 and 112 for labor, machinery and material furnished in the construction of a building on said lots under contract with said corporation, The Columbus Federation of Women's Clubs. A part of Inlot 112 has been released from the operation of this mortgage but the same remains as an apparent lien upon the property here under investigation.

5. It appears from the abstract that the taxes and penalties on two of the four parcels making up the property here under investigation, for the year 1929 and previous years, together with additional interest thereon, amount to the sum of one thousand two hundred forty-five dollars and sixty-seven cents, and that the taxes for the year 1930, the amount of which is not stated in the abstract, are also a lien upon said parcels.

It appears from the abstract that the other two parcels of land are upon the tax exempt list. Why this is so does not appear from the abstract.

Assessments upon a part of the above described property for the improvement of Town Street, amounting to the sum of two thousand two hundred forty-seven dollars and twenty-two cents with interest at four and one-half per cent, are unpaid and are a lien upon the parcels of land assessed.

Assessments for the improvement of Front street, aggregating in amount the sum of five hundred ten dollars and thirty cents with interest at four and one-half per cent, are unpaid and are a lien upon the parcels of land included in the above described property assessed.

There remains unpaid on assessments for the lighting system constructed for the benefit of Front street property, the sum of six hundred fifty dollars and ninety-six cents.

There is likewise a delinquent street cleaning assessment in the sum of sixty dollars and fifty-seven cents.

On November 14, 1927, one Susanna Morris, a member of said unincorporated association, The Columbus Federation of Women's Clubs, filed an action in the Common Pleas Court of Franklin County, Ohio—the same being Case No. 114078 on the dockets of said court—in which action The Columbus Federation of Women's Clubs, incorporated, The L. L. LeVeque Company, The Columbian Building and Loan Company and Heber W. Holt, are parties defendant. In this action the plaintiff seeks a judgment and decree of the court finding the lien claims of The Columbian Building and Loan Company, The L. L. LeVeque Company and Heber W. Holt to be invalid as liens against the property here under investigation.

On December 5, 1930, negotiations being then pending for the sale of the above described property to the State of Ohio, an order was made by the court in the above entitled case, providing that the agreed purchase price to be paid to said association, The Columbus Federation of Women's Clubs, should be paid into court and that upon such payment the lien claims of The Columbian Building and Loan Company, Fred S. Spring and H. W. Acker, The L. L. LeVeque Company and Heber Holt be canceled as liens against the property here under investigation and transferred to the money to be paid into court by the State of Ohio as the purchase price of said property.

In this connection it is noted that under date of June 30, 1922, when the title to said Inlot 112 was in said Fred S. Spring and H. W. Acker, they as owners of said lot and of Inlot 113, not here under investigation, entered into a contract with one E. P. Gearhold of Columbus, Ohio, by the terms of which it was contracted and agreed that upon the sale of said property said E. P. Gearhold was to receive an equal one-third of the proceeds of said sale above the sum of fifty thousand dollars less the sum of four hundred and eighty dollars to be deducted from the share of said E. P. Gearhold in and to said proceeds. This agreement, which was acknowledged by said Gearhold before a notary public, was filed for record December 12, 1923, in Vol. 20, page 28 of the miscellaneous records in the office of the Recorder of Franklin County, Ohio. I am advised that one-half of the interest of said E. P. Gearhold under this contract has been assigned to one C. F. Jaeger.

Neither said E. P. Gearhold nor C. F. Jaeger has been made a party defendant in the case above referred to. Inasmuch, however, as there is nothing in said agreement nor in the law which makes said contract a lien upon the property, the sale of which is contemplated by said agreement, it is not necessary to make either of said persons a party to said action nor to reckon with their claims so far as the sale and purchase of the property here under investigation is concerned.

In consideration of the plan outlined for the payment by the state of the purchase price of this property and the acquisition of the title thereto by the acceptance

of the deed therefor, hereinafter referred to, it is suggested that when the warrant of the Auditor of State, which should, of course, be made payable to the clerk of the Common Pleas Court, Franklin County, Ohio, is delivered to the clerk of said court, an order and entry of said court should be prepared, approved and filed, finding that the purchase price of said property has been paid into court pursuant to the former order of said court and ordering and directing that the above mentioned liens or lien claims on the property here in question, as well as the right, title and interest of The Columbus Federation of Women's Clubs in said property and in the equity thereof, if any, be canceled as against said property and transferred to the moneys paid into court by the State for the purchase of said property.

In connection with the sale of this property to the State of Ohio by The Columbus Federation of Women's Clubs which, as above noted, is an unincorporated voluntary association, though has been given to the question whether said association is empowered to sell said property without an order of court therefor under the provisions of Sections 10051, et seq., General Code, which provide that when "a charitable or religious society or association" desires to sell real estate owned by it such sale shall be upon order of the common pleas court upon petition, notice and hearing as therein provided for. Although this association may have some qualities of a charity in the broad sense in which that term is used in other connections, I do not think that this association is a charitable or religious society or association within the meaning of Section 10051. In the constitution of said association, in Article II thereof, it is provided "The object of this Federation is to promote acquaintance between the club women of Columbus and vicinity; to stimulate their intellectual growth and to secure and cooperate in education, civic, and welfare work." There is nothing in the object and purpose of said association as declared in its constitution to indicate that the predominant character of said association, with respect to its object and purpose, is of either a religious or charitable nature, so far as the question here presented is concerned. It follows from this conclusion with respect to the nature and character of said association that said association has the power and authority to sell the property here in question without an order of court under the provisions of Sections 10051, et seq., General Code.

Upon examination of the deed of special warranty executed by Stella M. Evans, Annie K. Ray and Marjorie D. Roth, as trustees of The Columbus Federation of Women's Clubs, a voluntary association, conveying this property to the State of Ohio, I find that said deed has been properly executed and acknowledged by said trustees and that the form of said deed is such that it is effective to convey the above described property to the State of Ohio, free and clear of all incumbrances except the taxes and assessments upon said property; and said deed is accordingly hereby approved.

On examination of encumbrance estimate No. 996, covering the purchase price of said property which by its terms is to be paid to the clerk of the Common Pleas Court of Franklin County, Ohio, I find that said encumbrance estimate has been properly executed and approved and that the same shows that there is a sufficient balance in the appropriation account to pay said purchase price. Said encumbrance estimate, as to execution and form, is likewise hereby approved.

I am herewith returning to you said abstract of title, warranty deed and encumbrance estimate.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*