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## APPROVAL CONDITIONALLY, ABSTRACT OF TITLE, WARRANTY DEED, ENCUMBRANCE RECORD NO. 1, CONTROLLING BOARD CERTIFICATE RELATING TO THE PROPOSED PURCHASE OF TRACT OF LAND IN LORAIN COUNTY.

COLUMBUS, OHIO, December 27, 1934.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my examination and approval an abstract of title, warranty deed, encumbrance record No. 1, Controlling Board certificate and other files relating to the proposed purchase of a tract of three hundred acres of land owned of record by one Bonnie E. Rust in Eaton and Grafton Townships, Lorain County, Ohio, which tract of land comprises parts of original Lots 61, 62, 79 and 80 in Eaton Township, and a part of Lot 4 in Grafton Township, and which is bounded and described as follows:

Beginning at a point in the Southerly line of the C. C. C. & St. L. Railway Right of Way in Lot 80 Eaton Township, and distant 2460.74 feet, North 55°-12' East as measured along the Southerly line of said Right of Way from the center line of Elm Street; thence in the Southerly line of said Right of Way, North 55°-12' East, 4118.26 feet to the Easterly line of Lot 62; thence in said Easterly Lot line, due South, 2200 feet to the Southerly line of said Lot; thence along said Southerly Lot line, North 89°-49' West, 1323 feet to a point; thence South 0°-13' East 1498 feet to a point; thence North 89°-38'-15" East, 1316.75 feet to the Easterly line of Lot 61; thence along said Easterly Lot line and the Easterly line of Lot 4 Grafton Township, South 0°-7' West 2258 feet to a point; thence North 89°-28' West 2284 feet to a point; thence North 0°-34' East, 1007.5 feet to Northerly line of Lot 4 and Township line; thence along said Township line and Southerly lines of Lots 61 and 80 Eaton Township, North 89°-52' West, 1159.93 feet to a point; thence in a line parallel to Elm Street, North 1°-17' East, 2562.37 feet to the place of beginning of lands herein described; containing within said bounds 300 acres of land.

From my examination of the abstract of title submitted, which abstract is certified by the abstracter under date of December 19, 1934, I find that Bonnie E. Rust has a good merchantable fee simple title to the above described tract of land and that the same is owned and held by her free and clear of all encumbrances except the following which are here noted as exceptions to the title in and by which she owns and holds this land:

1. Taxes for the year 1933 on a 386-acre tract of land, of which the tract of land here in question is a part, amounting to \$313.90, and the assessed penalty thereon are unpaid and are a lien upon the property. Taxes for former years in the amount of \$201.76 and assessed penalties thereon are unpaid and are a lien upon the property. In addition to the delinquent taxes above noted, the taxes for the year 1934, the amount of which is, perhaps, undetermined, are likewise a lien upon this property. In connection with the exceptions above noted with respect to the taxes on this property, it is noted that the abstract of title does not affirmatively

show whether or not there are any special assessments of any kind upon this property. An investigation with respect to this matter of special assessments, if any, on this property should be made before the transaction is closed for the purchase of the property.

2. On June 14, 1929, Bonnie E. Rust, the owner of this property, executed a mortgage to the Lorain County Savings and Trust Company on the 386-acre tract of land which includes the tract of land here under investigation. This mortgage was given to secure a note of even date therewith for the sum of nine thousand dollars payable one year from the date thereof with interest at seven per cent, payable quarterly. However, subsequent to the time when said abstract of title was submitted, there was submitted to me a release executed by the Lorain County Savings and Trust Company with respect to this mortgage, which instrument, executed under date of December 20, 1934, releases from the operation of this mortgage the 300-acre tract of land above described which is here under investigation. This lease instrument has been executed in the manner required by law and the legal effect of the same is to release the land under investigation from the operation and effect of the mortgage and to retain the mortgage lien on the residue of said tract of land upon which the mortgage was executed. This mortgage is, therefore, not at this time a lien upon the tract of land herein described, and the same is not here noted as an exception to the title in and by which Bonnie E. Rust owns and holds this property.

3. On May 20, 1930, Bonnie E. Rust executed an oil and gas lease to the Ohio Fuel Gas Company in and by which Mrs. Rust, as the owner of the property here under investigation, granted to said lessee all of the oil and gas therein, together with the right to use and occupy so much of said premises as might be necessary in drilling and operating for oil and gas and in removing these products from the land by pipe lines or otherwise, for a term of five years and so much longer thereafter as oil or gas are produced in paying quantities in and upon this property.

This lease has not been surrendered or otherwise canceled of record. However, the same seems to have been superseded by a subsequent oil and gas lease executed by Bonnie E. Rust to the Ohio Fuel Gas Company under date of July 17, 1934. This lease, like the one before mentioned, grants to the lessee above named all of the oil and gas in and under the 386-acre tract of land, which includes the lands here in question, together with the right to enter upon this land for the purpose of drilling and operating for oil and gas and to use and occupy so much of said premises as is necessary and convenient in removing said products from the land by pipe lines or otherwise. The term of this lease is ten years from August 20, 1934, and so much longer thereafter as oil and gas are produced in paying quantities in and upon this property. This oil and gas lease is, of course, an encumbrance upon this property and the same is here noted as an exception to the title in and by which Bonnie E. Rust owns and holds the property.

4. On November 23, 1931, Bonnie E. Rust, as owner of this tract of land, and the Lorain County Savings and Trust Company, as the owner and holder of the mortgage thereon, above noted, executed to the Postal Telegraph-Cable Company, its successors and assigns, the right and privilege of constructing and operating upon these lands its lines of telegraph and telephone, together with the necessary poles, wires, cables and other fixtures. This easement is an encumbrance upon the property and is here noted as an exception to the title in and by which Bonnie E. Rust owns and holds this property.

5. In addition to the leases and easements above referred to as exceptions to the title of Bonnie E. Rust in and to this property, it is noted that in the deed by which Thomas B. Bennington conveyed this property to Mrs. Rust it was recited that said deed is given subject to certain then existing easements and rights under instruments recorded in said county and referred to in said deed with reference to the particular record books and pages thereof mentioned in said recital. The several matters therein referred to were:

(1) Under date of May 27, 1889, one A. D. Rawson, then the owner of the property here in question or of a part of the same, granted to the National Transit Company the right to lay, maintain and operate a pipe line and a telegraph line in and over the lands then owned in Eaton Township and constituting a part of Lots 80 and 61, above referred to.

(2) Under date of March 14, 1896, A. D. Rawson granted an easement to the Buckeye Pipe Line Company in and by which the Buckeye Pipe Line Company, its successors and assigns were given the right to lay, maintain and operate pipe lines over the lands here in question then owned by Rawson in Eaton and Grafton Townships, Lorain County, Ohio.

(3) On October 1, 1904, one Angelo D. Rawson, successor in title to A. D. Rawson of these lands, executed a certain contract and agreement of record in and by which the Buckeye Pipe Line Company, its successors and assigns were given the right to erect and maintain a gate house on his lands in Eaton Township, which gate house was to be erected over pipe lines of the company at a certain point designated in the agreement.

(4) On or about May 9, 1910, T. G. Rawson executed a certain instrument in writing in and by which he granted or attempted to grant to the Ohio Postal Telegraph-Cable Company the right to construct and maintain lines of telegraph, including the necessary poles and fixtures, in and across property which he then owned or claimed to own in Eaton Township. The provision in the agreement was that the poles were to be set close to the south property line of the C. C. C. & St. L. Ry. Company, and that said railway company was to have the right to trim all trees necessary so as to give the wires the required clearance. The abstract does not show what, if any, affirmative action was taken by any of the respective grantees under the several instruments granting easements or other rights in this property referred to in this paragraph. Neither, on the other hand, does the abstract show that any of these grantees have abandoned the rights secured to them by these several instruments. Whether these or any other easements standing as encumbrances upon the title to this property will in any wise affect the use that your department intends to make of this property, is a matter to be decided by you and by the Superintendent of Public Works and Director of said Department, who, under the law, is authorized to purchase this property for the use of your department.

Upon examination of the warranty deed tendered by Bonnie E. Rust, who is the widow of one Albert F. Rust who died prior to the time when Bonnie E. Rust acquired this property from Thomas B. Bennington, and who is now unmarried, I find that said deed has been properly executed and acknowledged by said grantor. I further find, upon examination of the provisions of this deed, that the form of the same is such as to convey a fee simple title in and to this property to the state of Ohio, the grantee therein named, with the warranty contained in the deed that said premises are free and clear of all encumbrances whatsoever.

Upon examination of contract encumbrance record No. 1, which has been

submitted as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance in the appropriation account standing to the credit of the Department of Public Welfare to pay the purchase price of this property, which purchase price is the sum of nine thousand dollars. Although this encumbrance record has been signed by the Director of Finance and thus complies with the provisions of section 2288-2, General Code, the same has not been signed by the Superintendent of Public Works and Director of said Department, who, under the provisions of section 154-40, General Code, is the only officer in the state government who is authorized to purchase real property required by the state government or any department thereof. It follows, therefore, that before the voucher is issued by your department covering the purchase price of this property, the signature of the Superintendent of Public Works and Director of said Department to this contract encumbrance record should be secured. And, of course, no warrant should be issued for the purchase price of this property until the Superintendent of Public Works and Director of said Department has evidenced the purchase of this property by him by signing said contract encumbrance record. In this connection, it is noted that under date of May 15, 1934, the Controlling Board approved the purchase of the lands here under investigation and released from the appropriation account the money necessary to pay the purchase price of the property.

I am herewith returning to you for your further appropriate action the files above referred to, to wit, the abstract of title, warranty deed, contract encumbrance record No. 1, Controlling Board certificate and the deed executed by Thomas B. Bennington in and by which Bonnie E. Rust obtained title to this property.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

3694.

CEMETERY—OPERATED BY TOWNSHIP TRUSTEES UNDER SECTION 3441 ET SEQ. PROCEEDS FROM SALE OF LOTS MAY BE EXPENDED HOW.

*SYLLABUS:*

*A board of township trustees, operating a cemetery or cemeteries under Sections 3441 et seq., General Code, is unauthorized to expend money, arising from the sale of lots or by a tax levy, for the purpose of advertising lots for sale, or, payment of a commission to a person making sales of such lots, or employing persons to make sales of such cemetery lots.*

COLUMBUS, OHIO, December 28, 1934.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your recent request for my opinion reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following: