

the case at bar before it, could, if it found from the evidence that a mistake in the bid was not a result of willful neglect by the bidder, and that the mistake was of such character as to cause serious loss to the bidder if not relieved from the bid, order a return of the check to the bidder.

From the letter enclosed with your communication, it seems that your department has exercised its discretion and determined that the bid of the Franklin Asphalt Company was based on a bona fide mistake that was not the result of willful neglect of the bidder, and that the mistake was material. It also appears that your department let the contract after readvertisement to another bidder, based on specifications establishing five classes of labor, instead of the two classes under the original specifications, with resultant increase of estimate of cost for the project due to the higher wage scale.

Therefore, in specific answer to your question, I am of the opinion that your department has the right to, and should, return the certified check to the Franklin Asphalt Paving Company.

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

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3508.

APPROVAL, ABSTRACT OF TITLE TO LAND IN ANDOVER TOWNSHIP,  
 ASHTABULA COUNTY, OHIO, OWNED BY THE PYMATUNING  
 LAND COMPANY, FOR PUBLIC PARK, HUNTING AND FISHING  
 GROUNDS.

COLUMBUS, OHIO, November 26, 1934.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title to a certain tract of land in Andover Township, Ashtabula County, Ohio, which tract together with other tracts of land in Williamsfield, Andover and Richmond Townships in said county, the state of Ohio is acquiring from the Pymatuning Land Company. These lands are being acquired for the purpose and to the end that such lands and the waters inundating and submerging the same as a result of the construction and maintenance by the Water and Power Resources Board of the commonwealth of Pennsylvania of the dam at and across the outlet of the Pymatuning Swamp into the Shenango River in Crawford County, Pennsylvania, may be used as a public park and as public hunting and fishing grounds or territory.

The tract of land above referred to is the southwest part of Lot No. 44, according to the original survey of said township, and is bounded and described as follows:

Bounded on the South by the North line of Lot No. 45 in said Township; on the East by lands formerly owned by Joseph Stinson; on the North by lands formerly owned by said Joseph Stinson and extending far enough West to contain 26 Acres of land, and being the East part of lands Deeded by Ida Jones to J. H. Johnson, by Deed dated April

3rd, 1917, and found recorded in Deed Volume 225, Page 216, of Ashtabula County Records of Deeds.

This tract of land is the same as that conveyed by the Realty Guarantee and Trust Company to the Pymatuning Land Company by deed under date of December 30, 1921, which is recorded in deed volume 263, page 421 of the Record of Deeds in the office of the recorder of Ashtabula County, Ohio.

Upon examination of the abstract of title submitted to me and upon consideration of other information with respect to the title to this property since the date of the certification of said abstract by the abstracter, I find that the Pymatuning Land Company, the present owner of record of this property, has a good and indefeasible fee simple title to the property free and clear of all encumbrances except the taxes on this property for the year 1934, which are a lien thereon. In this connection, I am advised that the Pymatuning Land Company is to convey this property to the state of Ohio free and clear of all encumbrances except the taxes on the property for the year 1934, above referred to; and that with respect to such taxes an application is to be made by you on behalf of the Conservation Council to the Tax Commission of Ohio for an order transferring these lands to the tax exempt list under the authority conferred upon the Tax Commission of Ohio by the provisions of sections 5570-1 and 5616 of the General Code of Ohio. The lien of the taxes above referred to on the property here in question is in legal contemplation the lien of the State itself. And, in this view, this lien on the acquisition of the property by the state of Ohio will merge and become lost in the larger fee simple title in and by which the State will then own and hold the property. However, in order that the county auditor may be enabled to transfer this and other properties acquired by the State from the Pymatuning Land Company, to the tax exempt list in his office authorized and provided for in section 5570-1, General Code, it is suggested that upon the delivery and acceptance of the deed of the Pymatuning Land Company conveying these properties to the State, an application should be made immediately for an order of the Tax Commission exempting these properties from taxation under the authority of the sections of the General Code above referred to.

Inasmuch as the conveyance of this property by the Pymatuning Land Company to the state of Ohio for the purposes indicated is in fact a gift of this property to the State for said purposes, no contract encumbrance record or Controlling Board certificate is required as a condition precedent to the right and authority of the Conservation Council to accept this conveyance on behalf of the state of Ohio.

Upon the considerations above noted, the title of the Pymatuning Land Company to this tract of land is approved and the abstract of title to the same is herewith returned to the end that the same, together with the deed executed by the Pymatuning Land Company conveying this property to the State, may on acceptance of such deed by the Conservation Council, be filed with the Auditor of State in the manner provided by law.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*