

You have also submitted encumbrance estimate No. 52, encumbering the Welfare Building Fund for 1937 to the total amount of \$96,273.00.

You have also submitted the following papers: The division of contract, the estimate of cost, notice to bidders, proof of publication, workmen's compensation certificate, recommendation of the State Architect, Director of Public Welfare and Director of Public Works, the Controlling Board releases, the tabulation of bids, the letter of certification from the Auditor of State certifying that the plans and other necessary papers are on file in that office, and the form of proposal containing the contract bond properly executed, the power of attorney for the signer, its financial statement and its certificate of compliance with the laws of Ohio relating to surety companies.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with the other pertinent papers submitted in this connection.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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1473.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, AND  
CONTRACT ENCUMBRANCE RECORD RELATING TO THE  
PROPOSED PURCHASE OF A PARCEL OF LAND IN  
FRANKLIN TOWNSHIP, PORTAGE COUNTY, OHIO.

COLUMBUS, OHIO, November 17, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval an abstract of title, together with an extension thereof under date of August 18, 1937, a warranty deed, contract encumbrance record No. 2195 and other files relating to the proposed purchase of a parcel of land in Franklin Township, Portage County, Ohio, which is now owned of record by one Reese J. Davis and Charlotte E. Davis, his wife. This parcel of land which is being acquired by and in the name of the State of Ohio for the use of Kent State University, is more particularly described in the deed which has been tendered to the State by the above named owners of this property, as follows:

And known as being and lying in the northeast corner of Township Lot 13 in said Township and known as part of the property conveyed to grantor by Helen A. Hall by deed dated May 15, 1926, Vol. 300, Page 67 and P. B. Hall, Admr. by deed dated May 15, 1926. Volume 298, Page 70, Portage County Record of Deeds and more particularly described as follows: Beginning at a marked stone at the northeast corner of Township Lot No. 13, thence South  $0^{\circ} 12'$  West along the East line of said Lot No. 13, 633.66 feet to an iron pipe in the center line of Summit Street; thence North  $50^{\circ} 13'$  West along the center line of said street 365.19 feet to a point; thence North  $35^{\circ} 40'$  East and along the easterly line of property of Wm. Thomas, 190.08 feet to the northeasterly corner of said property; thence North  $50^{\circ} 13'$  West along the northerly line of said Wm. Thomas property 50.00 feet to the northwesterly corner thereof; thence South  $35^{\circ} 40'$  West along the westerly line of said property and to the center line of said Summit Street 190.08 feet to a point; thence North  $50^{\circ} 13'$  West along the center line of said street 65.33 feet to an iron pipe at an angle point in said street; thence continuing along said center line North  $47^{\circ} 38'$  West a distance of 83.86 feet to a point; thence North  $47^{\circ} 01'$  West and along the easterly line of land of Julia Sawyer 370.83 feet to a point in the north line of said Township Lot 13; thence South  $89^{\circ} 32'$  East along the North line of said Lot 180.47 feet to the place of beginning and containing 3.5149 acres of land (including the road) be the same more or less subject to all legal highways as surveyed September 15, 1937, by P. H. Evans, Registered Surveyor.

Upon examination of this abstract of title and the extension thereof, above referred to, I find that said Reese J. Davis and Charlotte E. Davis have a good merchantable fee simple title to this property subject only to the following objections which are here noted as exceptions to the title in and by which these persons now own and hold said property.

1. The above described parcel of land is a part of a tract which is referred to in the abstract and in the earlier deeds in the chain of title as a 4.20-acre tract of land "excepting therefrom a parcel of .62 acres of land theretofore conveyed to one C. F. Sawyer." On June 1, 1886, this 4.20-acre tract of land (subject to the .62-acre exception above noted) was owned by one Newton H. Hall. On this date Newton H. Hall, his wife joining with him in the conveyance, conveyed his undivided one-half interest in this property to one Henry Wilcox. Thereafter, on December 10, 1897, Henry Wilcox, his wife Helen M. Wilcox joining with him

in the conveyance, executed a quit claim deed conveying to said Helen M. Wilcox the undivided one-half interest which Henry Wilcox then owned and held in this property. Later, on September 22, 1899, Newton H. Hall and wife conveyed to Helen M. Wilcox the remaining undivided one-half interest in this property, it being recited in the deed that said grantee, Helen M. Wilcox, was then the owner of the other one-half interest in the property.

In this situation, it appears that by deed under date of August 31, 1905, Henry Wilcox conveyed this property to one Stella A. Hall. However, there is nothing in the abstract of title or in any of the other files submitted to me which shows how the title of Helen M. Wilcox in and to this tract of land became vested in her husband, Henry Wilcox. Helen M. Wilcox apparently did not sign the deed to Stella A. Hall last above referred to and it is possible that she was dead at the time of the execution of this deed. Moreover, it is possible that she died without issue surviving and that by reason of this fact this property as property which came to her by purchase, vested by fee simple title in her husband relict, Henry Wilcox. However, as above noted, the abstract of title does not by affidavit or otherwise show the facts relating to this transfer of title; and inasmuch as the deed executed by Henry Wilcox to Stella A. Hall is one of the deeds in the chain of title in and by which Reese J. Davis and Charlotte E. Davis obtained title to this property, I am required to note an exception to the title of this property with respect to the deed of Henry Wilcox to Stella A. Hall, above referred to.

2. Stella A. Hall died intestate March 20, 1925, and the property here in question and the larger parcel of which it was a part passed by descent to Helen A. Hall and Anna Woodworth who each inherited an undivided one-half interest in the property. Anna Woodworth died intestate December 27, 1925, leaving one Herbert Woodworth, a minor, her only heir and next of kin, who thereby inherited her undivided one-half interest in this property. It appears that one P. B. Hall was appointed administrator of the estate of Anna Woodworth and that as such administrator he filed an action in the Probate Court of Portage County for an order for the sale of the decedent's interest in this property to pay the debts of her estate, said Herbert Woodworth, the minor above referred to, being made a party defendant in this case. In this connection, the abstract of title in its meager statement of these court proceedings makes the following notation:

"By reference to such proceedings it is shown waivers and consents to sell such described lands were given by Helen A. Hall, a sister of said decedent, and by Herbert Woodworth by John G. Getz, his duly appointed, qualified and acting guardian."

As to this it is noted that Section 10781, General Code, which was then in force in its relation to proceedings by administrators and executors to sell the property of decedents for the payment of debts, provided in part as follows:

"Service, actual or constructive, shall be made as in other civil actions; except, that if all persons in interest consent in writing to the sale, service or process may be dispensed with. Legal guardians may sign such consent for their wards, except guardians of the person only of minors."

The abstract of title does not set out the proceedings relating to the appointment of John G. Getz as guardian of Herbert Woodworth, the minor above referred to. It appears further that in this proceeding to sell the undivided interest of Anna Woodworth, deceased, in and to this property for the payment of the debts of her estate, an order of sale was taken for the sale of this interest in this property and that the same was sold to Reese J. Davis and Charlotte E. Davis for a stated consideration of \$5,000.00. This sale was duly confirmed by the Probate Court and pursuant to such sale and order of confirmation a deed conveying such undivided one-half interest in the property to Reese J. Davis and Charlotte E. Davis was executed by the administrator and filed for record May 21, 1926. Touching the question as to the authority of John G. Getz, as guardian of Herbert Woodworth, to waive the service of summons on his ward and to consent to the sale of the undivided one-half interest of Anna Woodworth, deceased, in and to this property for the purpose of paying the debts of her estate, it may, perhaps, be assumed by reason of the fact that in some way as a part of this transaction Reese J. Davis and Charlotte E. Davis executed a mortgage on this property (since canceled of record) to John G. Getz, guardian of Herbert Woodworth, to secure the payment of the sum of \$6,666.67, that said John B. Getz was guardian of both the person and estate of said Herbert Woodworth and that as such he was, under the provisions of Section 10781, General Code, authorized to execute such waiver of summons and consent to the sale of this property. However, it is desirable that a more complete abstract of the proceedings in the Probate Court of Portage County, Ohio, for the sale of the interest of Anna Woodworth, deceased, in and to this property, be made; and, in this connection, so much of the proceedings relating to the appointment of John G. Getz as guardian of Herbert Woodworth should be abstracted as will definitely show that he was appointed guardian of both the person and estate of Herbert Woodworth, the minor son of Anna Woodworth, deceased. Further, in this connection, it does not appear that any guardian *ad litem*

was appointed for Herbert Woodworth in this proceeding. However, as to this, it does not appear that the prayer of the petition of the administrator for the sale of Anna Woodworth's interest in this property for the payment of the debts of her estate, was contested; and, in this view, no appointment of a guardian *ad litem* for this minor defendant was necessary. Section 10782, General Code.

As a further objection to the abstract of title in connection with the matters discussed in this exception, it is noted that there is nothing in this abstract of title to show whether Anna Woodworth had a husband living at the time of her death on December 27, 1925, who, as her relict, would be entitled to dower in the undivided one-half interest in this property of which she died seized. Information should be furnished on this point.

3. It is apparent from what has been above said that on the death of Stella A. Hall the title to the property here in question descended to Helen A. Hall and Anna Woodworth, as tenants in common. The abstract does not show whether there was any determination of inheritance taxes on the successions of Helen A. Hall and Anna Woodworth in and to this property. The abstract of title should be corrected to show the facts in regard to this matter and as to the amount of the inheritance taxes, if any, payable on such successions; as unpaid inheritance taxes on these successions to the estate and interest of Stella A. Hall in this property would be and are a lien upon the property.

The same observations may be made with respect to the succession to the undivided one-half interest of Anna Woodworth in and to this property upon her death December 27, 1925. The abstract should show what, if any, inheritance taxes were payable on the succession to her interest in this property occasioned by her death at the time above indicated.

4. On December 16, 1936, Reese J. Davis and Charlotte E. Davis executed a mortgage on the property here in question to the Kent National Bank to secure an indebtedness of even date therewith in the sum of \$2500.00 which, apparently, by the terms of the note evidencing such indebtedness was to be payable in monthly installments of \$30.00 each, covering, I assume, both principal and interest on this note. This mortgage is not canceled of record and the same to the extent of the amount of money remaining unpaid on the obligation, together with interest thereon, secured thereby, is a lien upon this property which should be cleared before the transaction is closed for the purchase of the property by the State of Ohio.

5. The taxes on this property for the year 1937, the amount of which was undetermined at the time of the abstract extension above referred to, are a lien upon the property.

6. It appears that this property is subject to special assessments for an improvement of some kind benefiting the property. The assessment installments have been paid to date but the installments payable in the years 1938 to 1942, inclusive, and amounting in the aggregate to the sum of \$57.77, are a lien on this property.

Upon examination of the deed tendered by Reese J. Davis and Charlotte E. Davis, I find that said deed has been properly executed and acknowledged by said grantors and that the form of this deed is such that it is legally sufficient to convey the above described property to the State of Ohio by fee simple title with a covenant of warranty on the part of said grantors that this property is free and clear of all encumbrances whatsoever. However, reading the description of this property as the same is set out in the deed, it is noted that one of the calls in this description reads "thence north 43° 01' west and along the easterly line of Julia Sawyer 370.83 feet to a point in the north line of said township lot 13." Reading this description and bearing in mind that at this point the description is taking us in a northerly direction along the east line of the Julia Sawyer property, it occurs to me that this call should read "thence north 43° 01' east and along the easterly line of land of Julia Sawyer 370.83 feet to a point in the north line of said township lot 13."

On examination of contract encumbrance record No. 2195 I find that the same has been properly executed and that there is shown thereby a sufficient balance in the appropriation account to the credit of Kent State University (Amended Senate Bill No. 315) to pay the purchase price of the above described property, which purchase price is the sum of \$13,260.00. It likewise appears from a recital of the fact set out in this contract encumbrance record that the purchase of this property has been approved by the Controlling Board in the manner provided by law.

Subject to the exceptions above noted, which should be removed to the satisfaction of this office before the purchase of this property is consummated by the payment of the purchase price therefor, the title of Reese J. Davis and Charlotte E. Davis in and to this property is approved. In this connection, it may be observed, however, that it does not appear whether the grantors, Reese J. Davis and Charlotte E. Davis, are in open physical possession of this property; and as to this it may be stated that if this property is in the actual physical possession of persons other than said grantors, the State of Ohio as the purchaser of the property will be required to take notice of whatever rights either legal or equitable such persons may have in the property. This observation is prompted by the fact that in the deed by which an undivided one-half interest in this property was conveyed by P. B. Hall, as administrator

or the estate of Anna Woodworth, to Reese J. Davis and Charlotte E. Davis, it was stated that said conveyance was subject to a lease for fox farm privileges held by Duffus and McGilvery, the rental on which lease was to be paid to the grantees in said deed from and after March 12, 1926. There is nothing further stated in the abstract of title with respect to this or any other lease upon the property; but full information should be furnished to this office upon this point before the purchase of this property is consummated by or through your department.

I am herewith returning to you the abstract extension above referred to, the warranty deed, contract encumbrance record No. 2195 and other files relating to the purchase of this property. The original abstract of title submitted to me is being retained for use in the examination of the title of contiguous properties which are likewise being purchased by the State through your department, for the use of Kent State University.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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1474.

MUNICIPAL ELECTRIC UTILITY FUND TRANSFER TO GENERAL FUND—NO AUTHORITY—EXCEPT, WHEN.

*SYLLABUS:*

*There is no authority whereby surplus moneys in a municipal electric utility fund may be transferred to the general fund, Section 5625-13, General Code, containing no such authority except after the termination of the operation of such public utility and Sections 5625-13a to 5625-13g, both inclusive, General Code, relating solely to the transfer of funds derived from taxation. Lakewood vs. Rees, 132 O. S. 399.*

COLUMBUS, Ohio, November 17, 1937.

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

GENTLEMEN: Your letter of recent date is as follows:

"We are inclosing herewith certified copy of application made by the City of Cuyahoga Falls to the State Tax Commission, requesting the Commission's permission to apply to the Court of Common Pleas of Summit County for a transfer of \$20,000 from the electric light fund to the public safety fund,