

6054.

APPROVAL—CERTIFICATE OF TITLE, ETC., TO LAND IN GREEN TOWNSHIP, SUMMIT COUNTY, OHIO—LILLY SWIGART.

COLUMBUS, OHIO, September 10, 1936.

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

DEAR SIR: You have submitted for my examination and approval a certificate of title, warranty deed, contract encumbrance record No. 7 and other files relating to the purchase of a tract of land owned by one Lilly Swigart in Green Township, Summit County, Ohio, which tract of land is more particularly described by metes and bounds as follows:

Being a part of the southeast quarter of Section No. 30 of Green Township, Summit County, Ohio, and being more completely described as follows:

Beginning at a stone set in the center line of Christman Road and on the southeast corner of Section No. 30; thence along the center line of Christman Road and the east line of Section No. 30, N. $6^{\circ} 45' 30''$ E. ten hundred fifty-two and four-hundredths (1052.04) feet to a stake; thence along Lewis Swigart's north line N. $82^{\circ} 55' 10''$ W. fourteen hundred seventeen and twelve-hundredths (1417.12) feet to a stake and the true place of beginning of the description of the property to be conveyed; thence continuing N. $82^{\circ} 55' 10''$ W. six hundred fifty-seven and thirty-eight hundredths (657.38) feet to Lewis Swigart's southwest corner; thence along the east line of land now or formerly owned by Nelson Pippus, S. $7^{\circ} 11' 50''$ W. six hundred ninety-five and seventy-five hundredths (695.75) feet to the center line of the Clinton-Comet Road; thence N. $21^{\circ} 17' 50''$ E. five hundred sixty-nine and twenty-nine hundredths (569.29) feet to a point; thence N. $81^{\circ} 35' 04''$ E. five hundred thirty-eight and fifty-six hundredths (538.56) feet to the true place of beginning and containing two and nineteen-hundredths (2.19) acres of land as surveyed by Francis Stafford, May 28, 1936.

Upon examination of the certificate of title submitted to me, which certificate of title was executed by The Northern Ohio Guarantee Title Company under date of March 28, 1936, I find that of said date Lilly

Swigart had a good indefeasible fee simple title to the above described tract of land subject only to the following exceptions:

1. On August 16, 1902, Elias Myers, the predecessor in title of Lilly Swigart in and to the above described tract of land, conveyed a right of way easement in and to the above described and other lands of the grantor in said township and county to The East Ohio Gas Company. By the easement thus granted to said company it was given the right to lay, maintain and operate two pipe lines for the transportation of gas in and over the above described and other lands covered by the easement. I am not advised by the certificate of title or otherwise whether The East Ohio Gas Company has laid down any pipe lines in and upon the above described premises pursuant to the easement thus granted to it. In any view, however, the easement thus granted is an encumbrance upon this property.

2. On September 10, 1907, said Elias Myers, acting by his son, Kelley Myers, granted a right of way easement to The East Ohio Gas Company, by which said company was given the right to lay, maintain and operate a gas pipe line in and through the above described and other lands of the grantor. As in the case above mentioned, I am not advised as to whether or not any pipe lines have been laid down in and upon the above described tract of land pursuant to the easement thus granted. Whatever the fact may be as to this, the outstanding easement for the purpose above stated, now owned and held by The East Ohio Gas Company, is an encumbrance upon the property.

3. On February 3, 1933, Lilly Swigart and Lewis Swigart, her husband, executed and delivered to The East Ohio Gas Company an oil and gas lease in and by which said company was given the right to enter in and upon the above described and other lands of the grantors and to drill and otherwise operate on said lands for oil and gas. By this instrument, the lessee was given the further right to construct tanks, stations and other structures upon such land for use by said company in the production and transportation of oil or gas produced on the premises. This lease is one for a term of seven years and for so much longer as oil or gas is found on the premises in paying quantities. I am not advised by the certificate of title or otherwise as to whether The East Ohio Gas Company, acting pursuant to the authority of this lease, has commenced any operations in and upon the above described tract of land for the purpose of producing oil or gas. In any event, however, this oil and gas lease is an encumbrance upon the property.

4. It appears from the certificate of title that the 1935 taxes on this property and the larger tract of which the same is a part are unpaid and are a lien upon the property. In addition to these 1935 taxes on the prop-

erty, the amount of which is not stated in the certificate, the undetermined taxes for the year 1936 are unpaid and are a lien upon the property.

5. The tract of land above described is a part of a larger parcel of 20 acres of timber land devised by the last will and testament of Elias Myers to his son Kelley Myers and to his daughter Lilly Swigart. By the fourth item of the last will and testament of Elias Myers, there was devised to Kelley Myers, in addition to other tracts of land mentioned in said item, "Nine and one-half acres of Timber land owned by me in a tract of Twenty acres owned by me out of Section No. 30 in Green Township, Summit County, Ohio." In the fifth item of said will, there is devised to Lilly Swigart, in addition to other tracts of land therein mentioned, "Ten and one-half acres of Timber land out of the twenty acre tract heretofore mentioned in Item Four." The sixth item of said last will and testament reads as follows:

"The last named parcel of land consisting of Twenty Acres Timber land, being all in one parcel, I desire to be divided from North to South; giving to my Son Kelly and his heirs the west part of said parcel 1 being Nine and one-half acres; and the East part of said parcel to my Daughter Lilly Swigart and her heirs."

On February 8, 1919, Kelley Myers and his wife executed a deed to Lilly Swigart in and by which there was conveyed to Lilly Swigart a tract of land which includes the smaller tract of land here in question which is described above. The consideration recited in this deed was "the exchange of property and \$10.00." Shortly thereafter, to wit, on March 22, 1919, Lilly Swigart and her husband Lewis Swigart executed a deed to Kelley Myers conveying the "South part" of the twenty-acre timber tract above referred to. It does not appear from the certificate of title submitted to me whether the tract of land described in the deed executed by Kelley Myers and his wife to Lilly Swigart was a part of the east part of the twenty-acre tract of land above referred to, which was devised to Lilly Swigart in and by the last will and testament of Elias Myers, or not. The point to my reference to the matters above stated lies in the fact that although the deed from Kelley Myers and wife to Lilly Swigart was executed February 8, 1919, it was not filed for record until February 18, 1933, after a judgment recovered against Kelley Myers and one Frank Barico had become a lien on property of Kelley Myers. In this situation, it is obvious that if the tract of land here in question is a part of the ten and one-half acre tract of land off of the east side of the twenty-acre tract of land above referred to, said judgment recovered against Kelley Myers and the lien thereon could not in any wise affect this property. On the other hand, if the parcel of land here in question

was not a part of the ten and one-half acre tract of land devised to Lilly Swigart by the last will and testament of her father, Elias Myers, but came to her by the deed of Kelley Myers out of property devised to him by said last will and testament, some question might be raised with respect to the lien of the judgment against Kelley Myers, above referred to.

I am inclined to the view, however, that the exception here noted may be safely waived. In the first place, there is no reason to question the good faith of the conveyance made by Kelley Myers and his wife to Lilly Swigart, which conveyance thereafter recorded afterwards was actually executed long before July 18, 1930, which was the date of the judgment against Kelley Myers. In other words, the judgment could operate only upon property which Kelley Myers owned at the time the judgment was rendered and not upon the property which he had previously conveyed to his sister. In the second place, it is altogether probable that since this certificate of title was made the judgment above referred to against Kelley Myers had been satisfied out of the proceeds of the sale of property recently sold by him to the state in connection with the Nimisila Reservoir project.

Upon examination of the warranty deed tendered by Lilly Swigart, I find that the same has been properly executed and acknowledged by her and by her husband Lewis Swigart. I further find, upon examination of this deed, that the form of the same is legally sufficient to convey this property to the State of Ohio by full fee simple title free and clear of the inchoate dower interest of Lewis Swigart, as the husband of said grantor Lilly Swigart. The deed contains a warranty that the parcel of land here in question is sold to the State of Ohio free and clear of all encumbrances whatsoever. In view of this covenant in the deed, I assume that the taxes on this property and which are a lien upon the same will be paid by the grantor and that the other encumbrances first above mentioned herein will likewise be released so far as this parcel of land is concerned. In this connection, it is clear that whatever adjustments are to be made with respect to such taxes and the other encumbrances above noted, such adjustments should be made before the transaction for the purchase of this property is closed by the execution and delivery of a warrant covering the purchase price of the property.

Upon examination of contract encumbrance record No. 7, I find that the same has been properly executed in the manner required by law and that there is shown thereby a sufficient unencumbered balance in the proper appropriation account to the credit of your department to pay the purchase price of the above described parcel of land, which purchase price is the sum of \$153.30.

Subject only to the exceptions above noted, I am returning with my approval said certificate of title, warranty deed and contract encumbrance

record No. 7 with the further suggestion that inasmuch as considerable time has elapsed since the certificate of title was made and signed by The Northern Ohio Guarantee Title Company, a further check of the records in the office of the Recorder, Clerk and Sheriff of Summit County be made to see whether or not there has been any change in the title of this property or whether any liens or other encumbrances have been charged against the same since the date of said certificate of title.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6055.

APPROVAL—BONDS OF VILLAGE OF MOGADORE, SUMMIT COUNTY, OHIO, \$18,100.00.

COLUMBUS, OHIO, September 10, 1936.

State Employees Retirement Board, Columbus, Ohio.

6056.

APPROVAL—RESERVOIR LAND LEASE TO LAND IN LICKING COUNTY, OHIO—BENJ. F. GAYMAN, BUCKEYE LAKE, OHIO.

COLUMBUS, OHIO, September 10, 1936.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR: I am in receipt of a communication from the Chief of the Bureau of Inland Lakes and Parks of the Division of Conservation in your department, requesting my approval of a certain reservoir land lease in triplicate, executed by the Conservation Commissioner to one Benj. F. Gayman of Buckeye Lake, Ohio.

By this lease, which is one for a term of fifteen (15) years and which provides for an annual rental of \$600.00, there is leased and demised to the lessee above named, the right to occupy and use for docklanding and business purposes, that portion of the inner slope and waterfront of Buckeye Lake in the west-half of Section 13, Town 17, Range 18, Licking County, Ohio, that is described as follows: