

2122.

APPROVAL, BONDS OF MONTVILLE TOWNSHIP RURAL SCHOOL DISTRICT, MEDINA COUNTY, OHIO, IN AMOUNT OF \$15,000.

COLUMBUS, OHIO, May 27, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2123.

APPROVAL, BONDS OF HIGHLAND COUNTY, OHIO, IN AMOUNT OF \$41,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, May 27, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2124.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO, IN AMOUNT OF \$171,225.06, FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, May 27, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2125.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO, IN AMOUNT OF \$107,075.02 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, May 27, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2126.

APPROVAL, PARTIAL ABSTRACT, PREMISES SITUATE IN FRANKLIN COUNTY, OHIO, CERTAIN LOTS IN R. P. WOODRUFF'S AGRICULTURAL COLLEGE ADDITION.

COLUMBUS, OHIO, May 28, 1921.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You have submitted a partial abstract, certified by John K. Kennedy, attorney-at-law, May 14, 1921, inquiring as to the status of the title to the following described premises as disclosed therein:

Situate in the county of Franklin, in the state of Ohio, and in the city of Columbus: Being lots numbers twenty-eight (28) and twenty-nine (29) of John Burton's subdivision of the north one-half of the south one-half of lot number two hundred seventy-eight (278) of R. P. Woodruff's agricultural college addition, as the same are num-

bered and delineated upon the recorded plat thereof, of record in Plat Book 3, page 350, Recorder's Office, Franklin county, Ohio.

Inasmuch as my predecessor, in opinion number 1451, Opinions of the Attorney-General, 1918, Vol. II, page 1173, approved the title to premises disclosed by an abstract which covered the premises above described down to the time all of the north one-half of the south one-half of lot No. 278 was conveyed by Vina Jaycox and Lorain A. Jaycox, her husband, to John W. Burton, by deed dated March 27, 1884, and the partial abstract submitted begins with said conveyance, it is believed to be unnecessary to consider the title prior to said date.

Said partial abstract, in section three, discloses an exception in the warranty clause of the conveyance therein set forth, as follows:

"Covenants of seizin, free and clear except mortgage of \$300.00 payable to R. P. Woodruff; same due in 1 to 7 years from July 1, 1884. Covenant of warranty."

Nothing further is shown in the abstract in reference to this mortgage mentioned in said section. Also, in section 14, a mortgage is shown granted by Samuel Foster to R. P. Woodruff, to secure the sum of \$448.00, the last payment of which was due in July, 1892. This mortgage has not been released upon the records as to the premises under consideration. However, it has been held that a mortgage is a specialty and its foreclosure is barred in fifteen years by the statute of limitations, or if an action in recovery of possession to the realty is sought, twenty-one years is the limitation (67 O. S., page 316). However, this rule is subject to the exceptions mentioned in section 11219 G. C., which provides:

"An action to recover the title to or possession of real property, shall be brought within twenty-one years after the cause thereof accrued, but if a person entitled to bring such action, at the time the cause thereof accrues, is within the age of minority, of unsound mind or in prison, such person, after the expiration of twenty-one years from the time the cause of action accrues, may bring such action within ten years after such disability is removed."

Again, the statute above quoted must be construed with section 11223 G. C., which reads:

"If payment has been made upon any demand founded on a contract, or a written acknowledgment thereof, or a promise to pay it has been made and signed by the party to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment or promise."

In view of the foregoing it will be seen that owing to the time that has elapsed, the rights under said mortgages would be barred unless coming within the exceptions above set forth. If it is important that the state purchase the premises, inasmuch as the premises are listed for taxation at a valuation of \$120.00, it is believed that the mortgages referred to need not be regarded as a serious objection, especially if the purchase price approximates the taxation valuation. It further will be observed that both of the mortgages covered premises in addition to the lots above described. The latter mortgage was upon fifteen lots originally, and was released as to only two.

No other defects in said partial abstract have been noted, and it is believed that, subject to the possible encumbrances above noted and the tax liens hereinafter pointed out, the title to said premises is shown to be in the name of James M. McIntosh, Trustee. According to the abstract these premises were conveyed to said trustee by the receiver of the Union National Bank of Marion county, Indiana. In the event that you should purchase said premises it is believed it would be advisable to obtain from said trustee, before accepting a conveyance, evidence showing his authority to convey as such trustee.

The taxes for 1920 and penalty thereon, amounting to \$3.35, are unpaid and a lien. Previous taxes and penalties, totaling \$15.10, are a lien. The taxes for 1921, the amount of which is undetermined, are also unpaid and a lien.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

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2127.

**AUTOMOBILES—NO AUTHORITY TO REFUND FEE PAID FOR CANCELED REGISTRATION CERTIFICATE WHICH IS IN EXCESS OF FEE CHARGED FOR NEW CERTIFICATE APPLIED FOR.**

*Section 6294-1 G. C. does not authorize the payment of refunds or rebates by the state automobile department in cases where the fee paid for the canceled registration certificate is in excess of the fee charged for the new certificate applied for.*

COLUMBUS, OHIO, May 28, 1921.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent letter, which reads:

“The secretary of state, automobile department, will appreciate a ruling from your office on the following questions (section 6294-1 G. C.):

(1) Transferring license plates from one vehicle to another. The above section provides that transfer may be made on a new application by the owner on payment of a fee of one dollar and paying the tax thereon less the amount of the tax that would be collected on account of the vehicle transferred on the date of such application. For example, Jones sells his Ford car, \$8.00 horse power fee, takes off and cancels his license number on that car; later he buys a Hudson, \$12.00 horse power fee, makes a new application, pays the difference of \$4.00 and a transfer fee of \$1.00, totaling \$5.00. The question causing so much controversy with the public is, can the department make a refund with the conditions reversed as follows: He sells his Hudson, \$12.00 horse power fee, and transfers to a new Ford, \$8.00 horse power fee.

(2) Jones registers a Packard Twin Six, paying \$20.00; sells it and buys a Ford, makes a transfer with \$1.00 fee, sells the Ford and buys a Packard Twin Six; additional fee \$12.00, transfer \$1.00; total, \$13.00; goes through the same operation four times, at the end of which he