

my approval thereon and returned the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1568.

APPROVAL, ABSTRACT OF TITLE TO LAND OF THE OTTERBEIN HOME IN TURTLE CREEK TOWNSHIP, WARREN COUNTY, OHIO.

COLUMBUS, OHIO, February 28, 1930.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval several abstracts of title, together with other files, relating to the proposed purchase of two certain tracts of land now owned of record by The Otterbein Home, a corporation, situated in Turtle Creek Township, Warren County, Ohio, and being more particularly described as follows:

“Being part of Section 6 in Township 3, Range 3 between the Miami Rivers, Warren County, Ohio, and parts of Sections 23, 29, 30, 35 and 36 in Township 4, Range 3 between the Miami Rivers, Warren County, Ohio:

*First Parcel:* Beginning at a spike in the Hamilton and Lebanon Road, said spike being S. 89° 43' 45" E. 634.27 feet from the corner of Sections 23, 24, 29 and 30 in Township 4, Range 3 between the Miami Rivers in Warren County, Ohio; thence S. 12° 14' 45" W. 617.95 feet to a spike; thence S. 15° 11' 45" W. 940.08 feet to a spike; thence S. 17° 6' 15" W. 690.12 feet to a spike; thence S. 10° 15' 45" W. 297.98 feet to a spike; thence S. 0° 16' 40" W. 1365.90 feet to a stake, the five preceding courses and distances are along the center line of the Mason and Springboro Road; thence leaving said Mason and Springboro Road S. 89° 11' 45" W. 2654.56 feet to a granite monument, said monument being the northwest corner of David E. Thompson's property; thence S. 0° 0' 30" W. 1312.10 feet along the line of said David E. Thompson's property to a point; thence S. 89° 16' 30" W. 2676.11 feet to a granite monument, said granite monument being the southwest corner of Section 29; thence N. 89° 44' W. 1552.35 feet to a stake in the right-of-way line of the C. L. & N. Railroad, Middletown Branch; thence along said right-of-way by a curve to the northeast with a radius of 5280.00 feet, a distance of 2445.23 feet to a point of tangent; thence N. 45° 18' 40" W. 3258.95 feet to an axel in said right-of-way line of the C. L. & N. Railroad; thence N. 0° 15' 30" E. 996.06 feet to a spike in the center line of the Hamilton and Lebanon Road, said spike being the northwest corner of Section 35; thence along the said center line of the Hamilton and Lebanon Road N. 89° 52' 45" E. 1087.90 feet to a spike; said spike being witnessed by a 20 inch Willow tree, northwest at 37.32 feet distant, a 16 inch Elm northeasterly 36.55 feet distant and a 15 inch Elm northeasterly 46.52 feet distant, and a 12 inch Elm southeasterly 27.11 feet distant; thence N. 89° 52' 45" E. 4240.10 feet along the center line of the said Hamilton and Lebanon

Road to a spike, said spike being the northeast corner of Section 35; thence S. 89° 49' 30" E. 3040.25 feet to a spike in the center line of the said Hamilton and Lebanon Road; thence S. 89° 49' 30" E. 2259.78 feet to a spike, said spike being the northeast corner of Section 29; thence S. 89° 43' 45" E. 634.27 feet to the place of beginning, containing nine hundred, ninety-eight and seven hundredths (998.07) acres, more or less.

*Second Parcel:* Beginning at a spike in the center line of the Hamilton and Lebanon Road, said spike being the point of beginning of Parcel No. 1; thence N. 89° 43' 45" W. 634.27 feet to a spike, said spike being the northeast corner of Section 29; thence N. 89° 49' 30" W. 2259.78 feet to a spike, said spike being the true place of beginning of second parcel; thence N. 0° 3' 30" E. 3906.12 feet to an iron pin, said iron pin being a corner of The Otterbein Home property; thence N. 89° 39' W. 3040.25 feet to a granite monument in the line between Sections 30 and 36; thence N. 89° 39' W. 2603.58 feet to a granite monument, said monument being the southwest corner of C. H. Ledford's tract; thence N. 0° 37' 30" E. 1406.03 feet to a granite monument; thence S. 89° 59' 15" W. 1801.72 feet to a granite monument; thence N. 89° 29' 15" W. 1672.68 feet to point in the center line of the Warren County Drainage Canal; thence S. 14° 30' 4148.40 feet along the said center line of the Warren County Drainage Canal to a point; thence S. 10° 0' 0" E. 270.60 feet to a point in the said center line of the Warren County Drainage Canal; thence S. 26° 30' 0" E. 234.30 feet to a point in the center line of the Warren County Drainage Canal; thence S. 35° 7' 45" E. 1098.77 feet to a spike in the center line of the Hamilton and Lebanon Road; thence S. 89° 56' 45" E. 979.34 feet to a spike; said spike being the northwest corner of Section 35; thence N. 89° 52' 45" E. 1087.90 feet to a spike in the center line of the Hamilton and Lebanon Road; thence N. 89° 52' 45" E. 4240.10 feet to a spike in the center line of the Hamilton and Lebanon Road; said spike being the northeast corner of Section 35; thence S. 89° 49' 30" E. 3040.25 feet to the place of beginning, containing one thousand, one and ninety-three hundredths (1001.93) acres, more or less.

The above described premises containing in all two thousand (2,000) acres, more or less out of the four thousand and five (4,005) acre tract, known as The Otterbein Home property in Warren County, Ohio."

The abstracts of title submitted to me, which have been continued from time to time and which have been supplemented and corrected by an additional abstract certified under date of February 26, 1930, relate to a number of tracts of land which together make up the two larger tracts above described.

The property here in question, together with additional acreage now owned by The Otterbein Home, came into the ownership of The United Society of Believers, commonly called Shakers, during the first quarter of the nineteenth century and was owned and held of record by trustees of said society acting from time to time until March 5, 1913, when, pursuant to an order of the Common Pleas Court of Warren County authorizing the sale of the property of said society, the same was sold and conveyed to the United Brethren Orphanage and Home, a corporation not for profit. On August 1, 1913, the name of this corporation, by amendment of its articles, was changed to The Otterbein Home, under which name said corporation now owns and holds the property here in question.

An examination of the abstracts of title relating to the several tracts of land included within the larger tracts of land above described, discloses a number of

minor irregularities in the early history of the title to several of said tracts, but with one exception said abstracts of title show that the Society of Shakers, so-called, had a good record title to each and all of said several tracts of land. The one exception noted is with respect to that part of a 172 acre tract off of the south end of Section 35, Township 4 E. Range 3 in the Symmes Survey between the Miami Rivers, which lies east of the railroad. As to this, it appears that about the year 1806, one David Mulford owned an undivided one-half interest in said Section 35 while the other undivided one-half interest in said section was owned jointly by one Jonathan Davis and one William Beedle. It appears there was some kind of an arrangement whereby David Mulford took in severalty the north half of said section and Jonathan Davis and William Beedle together the south half of said section. It is sufficient for the purpose of noting the exception in the record title with respect to the comparatively small tract of land above referred to that the record title to the same came to the then trustees of the Shakers Society through the heirs and devisees of William Beedle, and there is nothing to show how the interest of Jonathan Davis or his heirs was extinguished as to this particular tract of land. However, this particular parcel of land, together with the other tracts of land making up the tracts of land here under investigation, were held openly and adversely by the Shakers Society and their successors in interest for more than a hundred years and the exception above noted to the particular parcel of land above referred to can, of course, be easily waived.

After a careful consideration of the abstracts of title here submitted, together with their continuations and corrections, I am of the opinion that The Otterbein Home, a corporation, now owns and holds a good and indefeasible fee simple title to the above described tracts of land, subject only to the following exceptions:

1. A certain mortgage executed by The Otterbein Home under date of May 26, 1927, to The Northwestern Mutual Life Insurance Company in and for the sum of \$250,000. This mortgage, which covers a number of tracts of land, amounting in acreage to 4005 acres, including the land here under investigation, has not been canceled and is a valid lien upon the above described property. In this connection it is noted that there has been submitted for my examination and approval a release form to be executed by the authorized officials of The Northwestern Mutual Life Insurance Company, releasing from the operation of said mortgage the above described real property here under investigation. This proposed release is correct as to form and when the same is executed in the manner therein indicated, said instrument will be effective to release the above described property from the operation and lien of said mortgage.

2. The property here in question, in so far as it is affected thereby, is subject to the easement of a pipe line right of way granted to The Ohio Fuel Supply Company by deed dated May 4, 1906.

3. Taxes for the last half of the year 1929, amounting to the sum of \$3159.07, upon the total acreage now owned by The Otterbein Home, including the property here under investigation, are unpaid and are a lien upon said premises. No road or other public improvement assessments are noted in said abstracts of title and it is assumed that there are no such assessments upon this property.

I have carefully examined the warranty deed tendered by The Otterbein Home, which is executed pursuant to an order of the Common Pleas Court of Warren County, authorizing the sale of the above described property, and which is signed on its behalf by its president and secretary. I find said deed has been properly executed and acknowledged and that it is in form sufficient to convey to the State of Ohio a fee simple title to the above described property, free and clear of all encumbrances except taxes and assessments payable after December, 1929,

and except the easement of the Ohio Fuel Supply Company above referred to.

As a part of the files relating to the proposed purchase of real property above described, there has been submitted to me encumbrance estimate No. 5382. This encumbrance estimate has been signed by yourself, as Director of the Department of Public Welfare, and by Hon. Harry D. Silver, Director of Finance. Said encumbrance estimate shows that there are sufficient balances in the proper appropriation account to pay the purchase price of this property. In connection with this reference to said encumbrance estimate, it is noted that the same is signed by Hon. R. T. Wisda, former Superintendent of Public Works. Under the provisions of Section 154-40, General Code, as amended in 112 O. L. 479, 480, the Department of Public Works, among other powers granted to it, has the power to purchase all real estate required by the state government for any department, office or institution thereof. As an observation, which perhaps is somewhat beside the point, so far as my report on the title of this property is concerned, it may be noted that inasmuch as it is not contemplated that any officer of the state shall purchase real property for and on behalf of the state until after the title to such property has been approved by the Attorney General, no effective purchase of such property can be made prior to the approval of the title to such property by the Attorney General. In this view, it is suggested that said encumbrance estimate should likewise carry the signature of the present Superintendent of Public Works before warrants are issued covering the purchase price of this property.

In connection with the above discussion with respect to said encumbrance estimate, it is noted that the money necessary for the purchase of this property was released by a proper resolution of the Controlling Board under date of December 16, 1929.

I am herewith returning to you said abstracts of title, warranty deed, encumbrance estimate and Controlling Board certificate.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1569.

DISAPPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS  
DUTIES AS AGENT FOR SECTION 16 OF THE SCHOOL LANDS OF  
HARDIN COUNTY—MONROE McBRIDE.

COLUMBUS, OHIO, February 28, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, bond in the penal sum of \$12,000.00, upon which the name of Monroe McBride appears as principal, and the name of the Massachusetts Bonding and Insurance Company appears as surety. Said bond is conditioned for the faithful performance of the duties of the principal as agent for Section 16 of the school lands of Hardin County, and apparently given in pursuance of Section 3197 of the General Code, which requires you to approve the same as to amount and sureties.

While the bond in the form submitted when approved by you will undoubtedly be sufficient for the purpose, your attention is directed to the fact that the Secretary of State distributes a form of bond for state officers which contains the proper