

From an inspection of your department copy of contract encumbrance record, which has been submitted as a part of the files relating to the purchase of the above described property, I find that the same has been properly executed and that there is a sufficient balance in the item of G-1 lands transferred by the Controlling Board to said item from appropriated fishing license funds to pay the purchase price of this property, which purchase price is the sum of \$1,175.00.

It further appears that the purchase of this property has been approved by the Controlling Board and that, as above noted, it has made the necessary transfers of money to enable you to pay the purchase price of this property.

Subject only to the exceptions with respect to taxes above noted, the corrected abstract of title to this property is hereby approved and the same, together with the warranty deed and your department copy of contract encumbrance record, which are likewise approved, are herewith returned.

I do not find anything in the files submitted to me with respect to the purchase of this property in the form of a copy of a resolution or other appropriate action of the Conservation Council providing for the purchase of the above described property. Under the provisions of section 1435-1 and other related sections of the General Code, the Conservation Council is the only constituted authority of the state which is empowered to purchase property for the use of your department; and before any voucher is issued covering the purchase price of this property satisfactory evidence in the form of a transcript of the resolution of the Conservation Council providing for the purchase of this property should be furnished and made a part of the files so that the same, together with the other files, can be submitted to the Auditor of State before he issues his warrant covering the purchase price of the property upon the voucher therefor, presented to him for this purpose.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2761.

APPROVAL—CORRECTED ABSTRACT OF TITLE, WARRANTY DEED AND ENCUMBRANCE RECORD NO. 10, RELATING TO THE PROPOSED PURCHASE BY THE STATE OF A TRACT OF LAND IN MIFFLIN TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, May 29, 1934.

HON. WM. H. REINHART, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for my examination and approval a corrected abstract of title, a warranty deed and your department copy of contract encumbrance record No. 10, relating to the proposed purchase by the State of Ohio for the use of your Department of a certain tract of land owned by one Asa Giffen in Mifflin Township, Pike County, Ohio, which tract of land is more particularly described in the deed, above referred to, as follows:

"Beginning at a concrete monument where the farms of Asa Giffen, James W. Holton and the Timothy Hankins Heirs corner; said concrete monument is S. 12 degrees 29 minutes E., 692.53 feet from the intersection of the center line of the main State Highway (No. 124 in 1934) from Latham to Sinking Springs with the common line of Timothy Hankins Heirs, Z. B. and Rachel Hughes, Asa Giffen and James W. Holton Farms; thence S. 77 degrees 26 minutes W. 250.75 feet to a concrete monument where the Timothy Hankins Heirs, Arie S. Hemming Heirs, and Asa Giffen Farms corner; thence S. 77 degrees 26 minutes W. 113.95 feet to the center of the re-located Lapperell Creek; thence along re-located center line of Lapperell Creek, S. 12 degrees 58 $\frac{3}{4}$ minutes E. 238.99 feet; thence S. 39 degrees 26 minutes E. 798.78 feet to a concrete monument at the southwest corner of the James W. Holton, 11.75 acre tract; thence N. 12 degrees 29 minutes W. 952.80 feet to the place of beginning, containing 4.96 acres, more or less."

Upon my examination of the corrected abstract of title submitted, I find Asa Giffen, the owner of record of the above described tract of land, has a good and indefeasible fee simple title to this property and that the same is free and clear of all encumbrances except the taxes thereon for the last half of the year 1933, the amount of which is not stated in the abstract, and except the undetermined taxes for the year 1934. These taxes are, of course, a lien upon the property.

Upon examination of the warranty deed tendered by Asa Giffen, the grantor therein, I find that said deed has been properly executed and acknowledged by said grantor, who, it appears, is an unmarried man. Upon examination of the terms and provisions of this deed, I find that the form of the same is such that it is legally sufficient to convey this property to the State of Ohio by full fee simple title free and clear of all encumbrances excepting, as above noted, the taxes for the last half of the year 1933 and the undetermined taxes for the year 1934, as to which this deed contains the recital that the State of Ohio, as the grantee, assumes and agrees to pay such taxes.

From an inspection of your department copy of contract encumbrance record No. 10, it appears that the same has been properly executed, and that there is a sufficient unencumbered balance in appropriation item G-1, to which moneys were transferred for the purpose, to pay the purchase price of the above described property, which purchase price is the sum of \$496.00.

It likewise appears from a recital in the encumbrance record, as well as from a certificate of the controlling board, that this Board has approved the purchase of the property here under investigation, and, as above noted, has made the necessary transfer of moneys to pay for the same.

Subject to the exception before mentioned, with respect to taxes, the corrected abstract of title submitted to me is approved and the same, together with the warranty deed and encumbrance record No. 10, which are likewise approved, is herewith enclosed.

I do not find in the files submitted to me with respect to the purchase of the property here in question, any evidence in the way of a copy of a resolution of the Conservation Council, or otherwise, showing that the Conservation Council has provided for the purchase of this property. Under section 1435-1, and other related sections of the General Code, the Conservation Council is the only constituted authority of the State which is authorized to purchase, or otherwise acquire, property for the purpose for which this property is intended. In this situation it

is quite clear that before you issue a voucher covering the purchase price of this property, you should have before you evidence of the fact that the Conservation Council has by resolution, or other appropriate action, provided for the purchase of this property, which evidence in the form of minutes of the action of the Conservation Council in the premises should likewise be presented to the Auditor of State before a warrant is issued on said voucher.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2762.

STATE HIGHWAY PATROL—FINES OR FORFEITED BONDS OF PERSONS TRIED BEFORE JUSTICE OF THE PEACE—MONEY PAYABLE TO WHOM—ARREST MADE BY STATE HIGHWAY PATROLMEN.

SYLLABUS:

1. *All fines collected from, or moneys arising from, bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a justice of the peace of a township which extends beyond the territorial limits of a city or incorporated village should be paid one-half into the state treasury and one-half into the county treasury, regardless of the fact that the trial is held at the office of the justice of the peace, whose office is located within the geographical limits of a city or incorporated village within the township.*

2. *In the event the boundaries of a township and those of a city or village are coextensive, the fines collected from, or moneys arising from, bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a justice of the peace should be paid one-half into the state treasury and one-half into the county treasury.*

COLUMBUS, OHIO, May 29, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 1181-5 of the General Code, effective June 29, 1933, provides for the distribution of fines collected and all moneys arising from bond forfeitures for persons apprehended or arrested by the State Highway Patrol, to be paid one-half to the state treasurer and one-half to the treasurer of the city or village where such case may be prosecuted. Provided, however, that such prosecution is in a trial court outside of an incorporated city or village, such money shall be paid one-half into the county treasury and one-half into the state treasury.

QUESTION 1: In case a trial is held in a justice's court should the fine be paid one-half to the state and one-half to the county, re-