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APPROVAL—BONDS OF CITY OF CLEVELAND, CUYA  
HOGA COUNTY, OHIO, \$26,000.00.

COLUMBUS, OHIO, November 29, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of City of Cleveland, Cuyahoga County,  
Ohio, \$26,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated September 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of September 13, 1937, being Opinion No. 1143.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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APPROVAL—CERTIFICATE, DEED, AND CONTRACT EN-  
CUMBRANCE RECORD RELATING TO A TRACT OF  
LAND IN GREEN TOWNSHIP, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, November 30, 1937.

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

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a certificate executed by The Northern Ohio Guarantee Title Company under date of October 30, 1937, an administrator's deed and contract encumbrance record No. 31, relating to the title to the tract of land which heretofore has been owned of record by Mary A. Kepler

and others in the southwest quarter of Section No. 18, Green Township, Summit County, Ohio, and which with the land excepted therefrom is described and set out in the certificate of title and in the deed above referred to as follows:

Beginning at an iron pipe set in the southwest corner of the southwest quarter of Section No. 18; thence along the south line of Section No. 18, South  $83^{\circ}$ ,  $13' 00''$  East, one hundred nineteen and thirteen hundredths (119.13) feet to an iron pin in the center line of South Main Street Road and the true place of beginning of the description of the property to be conveyed; thence continuing along the south line of Section No. 18, South  $83^{\circ}$   $13' 00''$  East nine hundred eighteen and seventy-seven hundredths (918.77) feet to a point in the west line of lands now or formerly owned by M. Krasinski; thence along Krasinski's west line North  $7^{\circ}$   $46' 30''$  East eight hundred three and ninety hundredths (803.90) feet to a point; thence North  $71^{\circ}$   $29' 42''$  West five hundred fifteen and six hundredths (515.06) feet to a point in the center line of South Main Street Road; thence along the center line of South Main Street Road South  $42^{\circ}$   $59' 25''$  West one hundred sixty-five and seventy-six hundredths (165.76) feet to a point; thence continuing along the center line of South Main Street Road South  $29^{\circ}$   $53' 08''$  West eight hundred forty-two and twenty hundredths (842.20) feet to the true place of beginning and containing fourteen and fifty-six hundredths (14.56) acres of land.

Excepting from the above described premises, a strip of land, said strip being a part of the southwest quarter of Section No. 18 and being more completely described as a strip of land sixty (60) feet wide, the center line of which is the located line of the C. M. & A. R. R. Co., said located line intersects the south line of Section No. 18, South  $83^{\circ}$   $13' 00''$  East one hundred eighty-six and no hundredths (186.00) feet from the southwest corner of Section No. 18 and runs North  $2^{\circ}$   $48' 22''$  East one hundred thirty-nine and seventy-four hundredths (139.74) feet to the center line of South Main Street Road. The property herein intended to be excepted is that part of the old C. M. & A. R. R. Co. right-of-way lying between the south line of Section No. 18 and the center line of South Main Street Road and containing nineteen hundredths (0.19) of an acre of land. Leaving the land

to be conveyed as fourteen and thirty-seven hundredths (14.37) acres as surveyed July 1936 by Francis W. Stafford.

Upon examination of the certificate of title submitted to me, I find that the above described parcel of land, which is being acquired by the State of Ohio for the use of your department in the construction of the Nimisila Creek Basin Reservoir, was owned of record by fee simple title by one Solomon Kepler at the time of his decease, intestate, on or about January 21, 1934. On his death the title to this property descended to his widow Mary A. Kepler and to his children Bert L. Kepler, Emma L. Kepler, Montford M. Kepler and Lewis E. Kepler, so that said Mary A. Kepler became vested with an undivided one-third interest in the property and each of the four children of Solomon Kepler, above named, became vested with a one-sixth interest in this property.

At the time of the death of Solomon Kepler, this property was subject to certain liens and encumbrances hereinafter noted and to others which have since been canceled by act of the parties or by order of the court in the judicial proceedings here referred to.

On June 5, 1937, Homer H. Weaver, the duly appointed and qualified administrator of the estate of Solomon Kepler, deceased, filed a petition in the Probate Court of Summit County for an order of that court authorizing and directing him to sell the above described property for the purpose of paying the debts of said estate. In this proceeding, Mary A. Kepler, the widow of the deceased, and Burt L. Kepler, Emma Kepler, Montford M. Kepler and Lewis E. Kepler, children and heirs at law of Solomon Kepler, were made parties defendant as was, likewise, The Akron Savings and Loan Company which held a mortgage on this property executed to it by Solomon Kepler and Mary Kepler under date of May 29, 1928. The issue and service of summons on some of these parties defendant and the waiver of summons and consent to the sale of the property by others were, apparently, in substantial conformity to the provisions of sections 10510-17 and 10501-24, General Code; and inasmuch as The Akron Savings and Loan Company filed an answer and cross petition setting up its mortgage, all of the parties defendant were properly before the court. And in this and in all other respects the proceedings for the sale of this property in the case above referred to were regular. On the order of sale issued in the case, the property was sold to the state of Ohio for the sum of \$2700.00, which was the appraised value of the property. This sale was approved and confirmed by the court and by this order the administrator was ordered to execute a deed to the purchaser. This deed was executed and has

been submitted to me as a part of the files relating to the purchase of this property.

I am, therefore, of the opinion that on the sale of this property to the State and upon the execution and delivery of the administrator's deed pursuant to the order of sale made by the court in this case, the State obtains a good and indefeasible fee simple title to the above described property, subject to the following liens and encumbrances which, apparently, were not satisfied or otherwise discharged in the proceedings in the Probate Court to sell this property for the payment of the debts of the estate. The State, therefore, in purchasing this property, acquires the same subject to the following liens and encumbrances:

1. On August 16, 1917, Solomon Kepler and Mary Kepler, his wife, executed to The Northern Ohio Traction and Light Company a deed of easement in and by which said company was given the right to erect and maintain over the above described property or a part of the same a transmission line or lines consisting of towers, wires and all necessary appliances, it being provided that such transmission line or lines should be erected along the south side of the grantor's property contiguous to the highway and of sufficient width to carry out the intent and purpose of the grant. The certificate of title does not indicate what, if anything, was done by said grantee company with respect to the erection and maintenance of such transmission line or lines or to what extent, if the same have been erected, the property here in question will be affected by said lines.

2. On May 7, 1926, Solomon Kepler executed to The Tide Water Pipe Company an easement deed in and by which said grantee company was given the right to construct a telegraph and/or telephone line consisting of poles, wires, cross-arms, braces and other necessary equipment with the provision that the same should be set up along the road line of the Massillon, Akron and Turkeyfoot Lake Road. I am not advised by the certificate of title or by any of the other files submitted as to what, if anything, has been done by the above named company under this easement or how said line or lines affect the property here under consideration and the use that you desire to make of the same.

3. On January 14, 1932, Solomon Kepler executed to The Ohio Bell Telephone Company an easement deed in and by which said company was given the right to construct, operate and maintain lines of telephone and telegraph, together with all necessary conduits, poles, wires, cables, etc., upon and across this property. As with the encumbrances above referred to, I am not advised as to what, if anything, The Ohio Bell Telephone Company has done in the execu-

tion of the easement thus granted to it or as to how such line or lines will affect the use which you desire to make of this property.

4. On July 5, 1932, Solomon Kepler and Mary Kepler, his wife, executed to The Ohio Edison Company an easement deed in and by which said grantee company was granted a right of way in and over this land for the construction, maintenance and operation of a telegraph or telephone line in and over and across this property. Again, I am not advised as to what, if anything, has been done by said grantee company under this easement or how such easement will affect the property here under investigation and the use you may desire to make of the same.

As to each and all of the encumbrances above referred to, you or your agents in the field are doubtless advised as to the existence and extent of these encumbrances and as to the plans which you have in mind with respect to the removal of these lines as a part of the Nimisila Creek Basin Reservoir improvement for which this property is being acquired.

In the order of the Probate Court providing for the distribution of the sale of this property to the state of Ohio, it is provided that the taxes on this property shall be paid and that the mortgage to The Akron Savings and Loan Company, above referred to, shall be canceled of record, but no provision is made in said order for the payment of the special assessments on this property unless it was intended to include assessments in the term "taxes" as used in this order.

As to the special assessments on this property, it appears (1) that some time prior to December 20, 1931, an assessment was levied on this property for the improvement of Caston Road, which assessment was to be payable in twelve semiannual installments of \$4.98 each. This assessment, amounting in the aggregate to the sum of \$59.76, is a lien upon this property to the extent that the same has not been paid in and by the semiannual installments, the payments of which have heretofore accrued. As to this, it appears from the certificate of title that delinquent assessments of former years, amounting to \$38.36, are a lien and that likewise the semiannual installments for the first half of 1936 and for the last half of 1936 are delinquent. (2) It appears that some time prior to December 20, 1926, an assessment was levied on this property for the improvement of the South Main Street Road, the same to be paid in twenty semiannual installments of \$63.34 each, beginning December 20, 1926. This assessment, amounting in the aggregate to the sum of \$1266.80, is a lien upon the property to the extent that the same remains unpaid in and by the semiannual installment payments provided for. And as to this, it appears

from the certificate of title that there are delinquent installments of this assessment payable in former years amounting to \$477.28.

With respect to the general taxes on this property, the following statement is made in the certificate of title:

“Delinquent taxes of former years are paid except a balance which is a lien; amounting to .....\$ 4.37  
 Taxes for the first half of 1936 are delinquent; amounting to ..... 18.31  
 Penalty ..... 1.83  
 Taxes for the last half of 1936 are delinquent; amounting to ..... 18.31  
 A penalty of 10% will be added to this amount.  
 Taxes for 1937 are a lien.”

I do not know what arrangement, if any, has been made by your department with the administrator of the estate of Solomon Kepler and his heirs above named with respect to the payment of the taxes and assessments which are a lien on this property, out of the proceeds of the sale of the property to the State. Obviously, however, some adjustment of this matter should be made before the transaction for the purchase of this property is closed by your department.

Upon examination of the deed tendered by the administrator of the estate of Solomon Kepler, I find that the same is in conformity to the order of the Probate Court of Summit County in the proceedings above referred to; that the same has been executed and acknowledged in the manner provided by law; and that the form of the deed is such that it is legally sufficient to convey this property to the state of Ohio by fee simple title subject, however, to the liens and encumbrances above noted.

I have examined contract encumbrance record No. 31, which has been submitted to me as a part of the files relating to the purchase of this property, and upon examination of this instrument, I find that the same has been properly executed and that there is shown thereby a sufficient balance, otherwise unencumbered, to pay the purchase price of this property, which purchase price is the sum of \$2700.00. It further appears by recital properly made in this contract encumbrance record that the purchase of this property has been approved by the Controlling Board and that the money necessary to pay the purchase price thereof has been released for this purpose by said Board.

With respect to the mortgage executed by Solomon Kepler and Mary Kepler, his wife, to The Akron Savings and Loan Company,

the court in its order of distribution of the proceeds of the sale of this property to the State, which order was apparently made as a part of its order confirming the sale of the property to the State, provided that there should be paid to The Akron Savings and Loan Company from such proceeds the sum of \$1357.55. And although, as above noted, the court by this order directed the Clerk to enter a satisfaction of this mortgage, this direction was conditional on the payment of the mortgage out of the proceeds of the sale in the amount above stated. I assume, therefore, that arrangements will be made for the payment and satisfaction of this mortgage out of proceeds of the sale of the property. And it may be assumed, further, that the taxes and assessments on the property are to be paid in the same way.

I am herewith returning to you the certificate of title, administrator's deed and contract encumbrance record No. 31 for your further attention in closing the transaction for the purchase of this property in accordance with the findings herein made with respect to the property and the liens and encumbrances thereon.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

1561.

APPROVAL.—BONDS OF CUYAHOGA COUNTY, OHIO,  
\$1,000.00.

COLUMBUS, OHIO, November 30, 1937.

*State Employes Retirement Board, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Cuyahoga County, Ohio, \$1,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above county dated December 16, 1932. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of June 5, 1936, being Opinion No. 5683.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said county.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*