

6443.

APPROVAL—ABSTRACT OF TITLE, ETC., TO LAND IN DAYTON, MONTGOMERY COUNTY, OHIO.

COLUMBUS, OHIO, December 1, 1936.

The Ohio State Archaeological and Historical Society, Ohio State Museum Building, Columbus, Ohio.

GENTLEMEN: You have submitted for my examination and approval an abstract of title, deed and contract encumbrance record No. 1, relating to the proposed purchase by your Society of lots numbered 12448 and 12449 of the consecutive numbers of lots on the revised plat of the city of Dayton, Montgomery County, Ohio, with all the privileges and appurtenances thereunto belonging, to the end that said premises may serve as the Paul Lawrence Dunbar Memorial and Museum under the care and control of your Society. The proposed purchase of the property here in question is under the authority of Amended Senate Bill No. 450 enacted by the 91st General Assembly under date of July 23, 1936, which went into effect on the 26th day of October, 1936, and which provides that for the purpose of establishing a state memorial and museum building The Ohio State Archaeological and Historical Society, through its Board of Directors, is authorized to acquire by deed, gift, purchase or otherwise the home of Paul Lawrence Dunbar, nationally known negro poet, and establish thereat a state memorial and museum building commemorating the life and work of said Paul Lawrence Dunbar. Said act further provides that said purchase shall be approved by the Governor and the Attorney General and that when said purchase has been accepted the property purchased shall be conveyed to the state of Ohio and that the deed thereof shall be duly recorded and deposited with the Auditor of State.

By section 2 of this act, it is provided that the memorial therein authorized shall be known as the Paul Lawrence Dunbar Memorial and Museum and that the care and control thereof shall be vested in The Ohio State Archaeological and Historical Society, which shall hold the lands and property subject to such use as the General Assembly may by law direct. By section 3 of this act, it is provided that for the purpose of carrying out the provisions of the act and of defraying the cost and expense of acquiring and establishing said memorial and museum, there is appropriated out of any funds in the general revenue fund not otherwise appropriated the sum of \$4,680.87.

The property here in question is being acquired under the authority of said act from the executrix of the estate of Matilda J. Dunbar who owned this property at the time of her death February 24, 1934. The

property is being sold by the executrix of said estate, one Helen Gillim, pursuant to an order of the Probate Court of Montgomery County, Ohio, authorizing her as such executrix to sell this property at private sale. This order of the court was made under date of October 8, 1936, in Case No. 77203-A on the docket of said court, said case being one filed in this court under date of March 26, 1936, for the purpose of securing an order for the sale of this property to pay the debts of said estate. It appears further in this connection that on October 17, 1936, an entry was filed in this case showing the sale of this property to The Ohio State Archaeological and Historical Society for the sum of \$4500.00 and that an entry was filed confirming such sale and ordering and directing the execution of a deed conveying this property to The Ohio State Archaeological and Historical Society.

Upon examination of the abstract of title submitted, which abstract of title is certified by the abstracter under date of November 5, 1936, I find that at the time of the death of Matilda J. Dunbar, she owned and held the above described property by fee simple title and that the same was free and clear of all encumbrances thereon except taxes in an amount not stated and except a certain mortgage which was executed on this property by Matilda Dunbar to The Miami Loan and Building Association under date of November 5, 1915. This mortgage was executed for the purpose of securing the payment by Matilda Dunbar of her promissory note of even date therewith in the sum of \$2200.00, payable in monthly installments according to the contract. This mortgage was a lien upon the property at the time of the death of Matilda J. Dunbar to the extent of the amount of money remaining unpaid on said mortgage note and accrued interest thereon; and this mortgage is likewise a lien upon this property at the present time to the extent of the amount unpaid upon this mortgage note. It further appears from the abstract that as of December, 1935, the taxes due and payable on this property amounted to the sum of \$213.98 and that additional taxes due and payable on the property in June, 1936, amounted to the sum of \$33.70. These taxes are, of course, a lien upon the property as are the undetermined taxes for the year 1936. Provision should be made for the payment of the amount due and owing on this mortgage, which, apparently, is now held by the Superintendent of Building and Loan Associations of the state of Ohio in the liquidation of The Miami Loan and Building Association, and for the payment of the taxes above referred to, in the transaction for the purchase of this property, in the issuance of voucher or vouchers covering the purchase price of the same. In this connection, it is suggested that in closing the transaction for the purchase of this property one voucher be issued payable to the order of Helen Gillim, as executrix of the estate of Matilda J. Dunbar, deceased, and that on this voucher the Auditor of State issue

three warrants covering, respectively, the costs in the case, the taxes above referred to and the balance of the purchase price of the property which is to be received by the executrix and accounted for by her. It may be further suggested that whatever further indebtedness in the way of general claims against Matilda J. Dunbar existed at the time of her death the same became liens upon this property. *Straman v. Rehtine*, 58 O. S., 443, 457. As to this, it may be assumed that if any such general claims against Matilda J. Dunbar existed at the time of her death, the same have been filed with the executrix and will be paid out of the proceeds of the sale of this property.

Upon examination of the deed executed by Helen Gillim, as executrix of the estate of Matilda J. Dunbar, deceased, I find that although this deed apparently follows the order of the Probate Court of Montgomery County directing the sale of this property at private sale, I am unable to approve this deed for the reason that by its terms it conveys this property and the title thereto to The Ohio State Archaeological and Historical Society by name contrary to the provisions of Amended Senate Bill No. 450, above referred to, which provides that upon approval of the purchase of this property by the Governor and the Attorney General the property shall be conveyed to the state of Ohio, and that the deed thereof shall be duly recorded and deposited with the Auditor of State. In this situation, I am of the opinion that if the purchase of the above described real property and the several items of personal property described in the bill of sale which has been submitted to me in this connection is desired by The Ohio State Archaeological and Historical Society, said Society should provide for the purchase of this property by a resolution of the Board of Directors of said Society subject to the approval of the Governor and the Attorney General, and that after said resolution has been approved by the Governor and the Attorney General a deed should be executed by Helen Gillim, as the executrix of the estate of Matilda J. Dunbar, deceased, conveying this property directly to the state of Ohio by name. It should be further added in this connection that before such deed is executed, an order of the Probate Court of Montgomery County should be made approving this sale as one made to The Ohio State Archaeological and Historical Society for the use of the state of Ohio, and directing the execution of the deed conveying the property to the state.

I am inclined to the view that carrying out the intent and purpose of the act of the legislature above referred to, the items of personal property included in the bill of sale submitted to me should by such bill of sale be sold and transferred to the state of Ohio by name rather than to The Ohio State Archaeological and Historical Society.

Upon examination of contract encumbrance record No. 1, submitted

as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby an unencumbered balance in the appropriation account to the credit of The Ohio State Archaeological and Historical Society sufficient in amount to pay the purchase price of this property.

I am herewith returning to you said abstract of title, deed, contract encumbrance record, bill of sale and other files relating to the purchase of this property for such action as you may desire to take in line with this opinion and the suggestions therein made.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6444.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$6,000.00.

COLUMBUS, OHIO, December 1, 1936.

Industrial Commission of Ohio, Columbus, Ohio.

6445.

APPROVAL—BONDS OF VILLAGE OF JEFFERSON, MADISON COUNTY, OHIO, \$11,500.00.

COLUMBUS, OHIO, December 1, 1936.

Industrial Commission of Ohio, Columbus, Ohio.

6446.

APPROVAL—BONDS OF SPRINGFIELD TOWNSHIP RURAL SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$72,000.00.

COLUMBUS, OHIO, December 1, 1936.

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