

Section 4295 of the General Code in part provides :

“Council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state, \* \* \* ”

Section 4296 of the General Code in part provides :

“In such ordinance the council may determine the method by which such bids shall be received, the authority which shall receive them, and which shall determine the sufficiency of the security offered, the time for the contracts for which deposits of public money may be made, and all details for carrying into effect the authority here given.”

It will be seen that by these sections a good and sufficient surety bond becomes a part of the depository bid and that the council must determine the authority which will receive such bids and pass upon the sufficiency of the security offered.

From the above sections it will be seen that in both instances it is necessary that the council take action entering into the contract. As a member of the council is interested in the award of the contract by virtue of obtaining a commission for executing the surety bonds, it is believed that such a member would have an interest in the expenditure of money by the corporation.

You are therefore advised that contracts entered into by a depository under section 4295 and for construction where the surety bond is solicited and written by a member of a council are illegal under section 3808 of the General Code.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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3868.

ABSTRACT, STATUS OF TITLE TO JOHN AND IDA MAY YODER TRACT OF LAND FOR PART OF SITE FOR ADDITIONAL INSTITUTION FOR THE FEEBLE MINDED IN NORTHERN OHIO.

COLUMBUS, OHIO, December 8, 1926.

In re: Abstract of Title of John and Ida May Yoder Tract.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Examination of an abstract, warranty deed and other data submitted for my examination and approval, discloses the following:

The Abstract as submitted was prepared by the Wayne County Abstract Company of Wooster, Ohio, and is certified under date of September 27, 1926, and pertains to 42.61 acres in the northeast part of the southeast quarter of section 17, township 16, range 12, East Union township, Wayne county, Ohio, which premises are more particularly described by metes and bounds in the caption to said abstract submitted herewith, and which land is to be used as a part of the site for an additional institution for the feeble minded in Northern Ohio.

The description on page 2 of the Abstract seems to indicate that a part of said premises is used as a roadway. However, the state is purchasing all the surrounding territory and the deed hereinafter referred to conveys all the title of the grantors in said half quarter to the state so that I do not think this need be given consideration.

There is nothing in the Abstract to show who the heirs of Jacob Franks named as grantee on page 5 of the Abstract were. However, I think the note of the Abstractor shown on page 6 is correct as the subsequent items seem to indicate that the persons named in said note were all and the only heirs of said Jacob Franks except that his widow's name was perhaps Margaret instead of Martha. However, she is no doubt dead by this time as the deed to Jacob Franks is dated December 20, 1816.

There is nothing in said Abstract to show whether or not the grantors named on pages 11, 13 and 14 were married at the time of the execution of these conveyances. However, these deeds are dated 1855, 1856 and 1862 respectively, so that I am of the opinion that the question of dower may be disregarded.

The fact that no power of attorney is on record authorizing the cancellation of the \$750.00 mortgage released in 1873 as shown on page 16 is, in my opinion, inconsequential and may be disregarded.

On page 64 of said Abstract is an uncancelled mortgage now held by The Commercial Banking and Trust Company of Wooster, Ohio, which the vendors in their contract of sale agree to pay and payment of which should be made a condition of the delivery of the voucher.

There is submitted herewith the oil and gas lease now held by The Logan Gas Company as set forth on pages 65 and 66 of said Abstract, on which is an assignment to the State of Ohio, which lease the state in its contract of purchase agreed to assume.

Taxes for the year 1926, shown on page 69, the amount of which is undetermined, are unpaid and a lien. However, the vendors in their contract of sale have agreed to pay these taxes. Payment should of course be made a condition of the delivery of the voucher.

In view of the above explanation I am of the opinion that said Abstract shows a good and merchantable title to said 42.61 acres in John and Ida May Yoder.

A warranty deed from John Yoder and wife, Ida May Yoder, otherwise known as Ada May Yoder is submitted herewith and is in my opinion sufficient to convey the title of said premises to the State of Ohio.

It also appears from a copy of minutes herewith enclosed that said purchase has been approved by the Controlling Board. A regularly certified encumbrance estimate should accompany this Abstract.

The Abstract, warranty deed and other data submitted are herewith returned.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*