

certain provisions are therein provided for the protection of the remainder of the company's property, wherein it is agreed by the Department of Highways that it will construct necessary lateral supports in order that landslides may not occur on this company's land, due to a cut which is being made through said property by virtue of the improvement of said highway. Certain other provisions pertain to the construction of a retaining wall which is necessary to properly obtain a 15 foot driveway, to be constructed by the company as a means of ingress and egress to its property.

I have noted several minor corrections by making lead pencil notations which I deem advisable.

Finding said agreement in proper legal form I shall formally approve this agreement when the same is properly executed, providing the corrections are made, as noted in said agreement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1895.

APPROVAL, ABSTRACT OF TITLE TO LAND OF THOMAS MILLER, IN
HANOVER TOWNSHIP, ASHLAND COUNTY, OHIO.

COLUMBUS, OHIO, March 24, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my opinion a corrected abstract of title of a tract of land in Hanover Township, Ashland County, Ohio, owned by one Thomas Miller, and referred to and more particularly described in Opinion No. 1649 of this department, under date of February 1, 1928.

As a result of my examination of the corrected abstract of title submitted, I find the infirmities in the title to the various parcels making up this tract noted in exceptions Nos. 1 to 15 inclusive in said Opinion No. 1649 have been corrected by the inclusion in the corrected abstract of certain deeds, court proceedings and affidavits touching the various matters noted in said exceptions.

I am of the opinion that Thomas Miller, the owner of record of said lands and premises, has a good and merchantable fee simple title thereto, subject to what is apparently a private right of way for the benefit of one John Kinney, extending through a part of said lands and premises from the Butler and Bellville road on the southeast boundary of said lands in a northwesterly direction to the lands of said John Kinney lying to the southwest of the lands and premises of said Thomas Miller.

Said lands and premises are further subject to the following liens and encumbrances:

1. At section 60 of the abstract, there is shown a mortgage deed dated September 3, 1926, from Thomas Miller, to the Farmers Bank of Loudonville from which it appears that the original mortgage indebtedness was \$2250.00. This mortgage, to the extent of the amount unpaid thereon, is a lien on the lands here under investigation.

2. At section 61 of the abstract there is shown a mortgage deed under date of June 27, 1927, from said Thomas Miller to John H. Miller. The original mortgage indebtedness as shown by this mortgage deed is \$485.00. This mortgage to the extent of the amount remaining unpaid thereon, is a lien on said land.

3. Under date of March 7, 1928, Thomas Miller executed and delivered to the Farmers Bank of Loudonville, Ohio, a mortgage on said lands in the sum of \$460.00. This mortgage to the amount unpaid thereon, is a lien on said lands.

4. On January 11, 1928, the Farmers and Merchants Banking Company of Millersburg, Ohio, recovered a judgment by the consideration of the Court of Common Pleas of Ashland County, Ohio, against said Thomas Miller and others, in the sum of \$684.00 with interest thereon at the rate of seven per cent per annum from January 11, 1928, and the costs of said action taxed in the sum of ----- dollars. On the same day, an execution was issued to the sheriff of Ashland County which execution was levied on the lands of said Thomas Miller here under investigation. Said judgment, accrued interest thereon, and the accrued costs of said action are a lien on said premises.

On March 7, 1928, one W. J. Weirick recovered a judgment against said Thomas Miller in the court of M. J. Huffman, justice of the peace, in and for Hanover Township, Ashland County, Ohio, which judgment together with interest thereon and costs accruing in the action amounted to \$71.06. On March 8, 1928, a duly authenticated transcript of said judgment was filed in the office of the clerk of the court of common pleas of Ashland County, and an execution was issued thereon which was levied by the sheriff on the lands here under investigation. This levy was for said the sum of \$71.06, plus additional costs in the amount of \$2.50, amounting to \$73.56. This judgment and the levy made thereon are a lien upon said lands and premises.

6. The abstract shows that there are delinquent taxes against said lands in the sum of \$264.08 which are a lien.

7. The taxes for the year 1927, the amount of which is not stated in the abstract, are also a lien.

8. Under date of October 6, 1921, said Thomas Miller by a certain instrument in writing granted to the Buckeye Pipe Line Company, its successors and assigns, a right of way over and through said lands for the purpose of constructing and maintaining one or more lines of pipe for the transportation of petroleum, together with the right to erect and maintain such telegraph and telephone lines as the Buckeye Pipe Line Company might deem necessary for the conduct of its business. There is nothing in the abstract to show what, if anything, said the Buckeye Pipe Line Company has done pursuant to the grant of said right of way.

9. Under date of April 5, 1927, said Thomas Miller by a certain instrument in writing, granted to the Ohio Fuel Supply Company the exclusive right to drill for, produce and market oil and gas found in and upon said lands and premises, for a term of five years, and so much longer thereafter as oil or gas are produced in paying quantities on said lands and premises. There is nothing in the abstract to show what, if anything has been done by said lessee, the Ohio Fuel Supply Company pursuant to said lease.

I have examined the deed executed by said Thomas Miller, conveying to the State of Ohio said lands and premises. Said deed is properly executed and the same is in proper form in its description of said property and otherwise, to convey a full fee simple title to said lands, free and clear of all encumbrances except as above noted. In this connection it is my understanding that the mortgage, judgment and tax lien encumbrances above noted are to be paid off and discharged out of the purchase money, and the balance only, paid to Mr. Miller.

The encumbrance estimate submitted with respect to the proposed purchase of this property is properly executed, and shows that there are unencumbered balances in the appropriation account sufficient to pay the purchase price of this property.

The files submitted to me likewise show that the purchase of this property has been approved by the Board of Control.

I am returning to you herewith said corrected abstract, deed and encumbrance estimate and other files pertaining to the purchase of this property.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1896.

COUNCIL OF VILLAGE—AUTHORITY TO ENTER INTO A CONTRACT WITH FIRM OF ENGINEERS FOR PERFORMANCE OF ENGINEERING SERVICES— PERIOD OF CONTRACT DISCUSSED.

SYLLABUS:

1. *The council of a village has, unless limited by charter, authority to enter into a contract with a firm of engineers for the performance of engineering services in connection with local improvements, compensation therefor to be made upon a percentage basis of the cost of the improvement.*
2. *Where a contract of this character covers a period beyond the term of those in office at the time it was entered into, the validity of the contract is dependent upon its reasonableness in view of all the circumstances.*

COLUMBUS, OHIO, March 26, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“ Section 4241, General Code, reads:

“The council shall not enter into any contract which is not to go into full operation during the term for which all members of such council are elected.”

QUESTION: May the council of a village legally enter into a contract with a firm of engineers for a period of six years, such contract providing for an annual diminishing rate of compensation for all services rendered during the life of the contract?

A copy of the contract in question is enclosed herewith.”

The copy of the contract which you enclose is too long to be quoted in full herein. Article I of the contract, however, is as follows:

“Article I. The engineers under the direction and to the satisfaction and approval of the village agree to furnish such professional services in