

building and equipment bonds dated November 1, 1938, bearing interest at the rate of 3% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

3196.

STATUS, CORRECTED AND SUPPLEMENTED ABSTRACT OF TITLE, AND OTHER INSTRUMENTS, STATE OF OHIO, THROUGH BOARD OF TRUSTEES, MIAMI UNIVERSITY, OXFORD, OHIO, PURCHASE, PARCEL OF LAND, DESIGNATED AND DESCRIBED, IN OXFORD TOWNSHIP, BUTLER COUNTY, OHIO, FROM ADMINISTRATOR, ESTATE OF OLIVE GENTRY, DECEASED, PURCHASE PRICE. \$1,000.00.

COLUMBUS, OHIO, November 7, 1938.

HON. W. P. ROUDEBUSH, *Secretary, Board of Trustees, Miami University, Oxford, Ohio.*

DEAR SIR: There have been submitted for my examination and approval a corrected and supplemented abstract of title, warranty deed, contract encumbrance record No. 1669 and other files relating to the purchase of a parcel of land which was owned of record by one Olive Gentry at the time of her recent death and which is being conveyed to the President and Trustees of Miami University by W. H. Gentry, as administrator of the estate of Olive Gentry, deceased, acting pursuant to an order of sale, sale and confirmation thereof in certain proceedings lately filed in the Probate Court of Butler County by said administrator. The parcel of land here referred to is delineated and described as follows:

Being a part of Lot Numbered Five (5) in Section Twenty-three (23), Oxford Township, Butler County, Ohio, which township is also known and designated as Town Five (5) North, Range One (1), East of the meridian line drawn from the mouth of the Great Miami River, which said part of Lot Number Five (5) aforesaid is more particularly bounded and

described as follows: Beginning at a point which will be found by commencing at the Southeast corner of said Lot Numbered Five (5) and following its Southern line a distance of Seven (7) chains and fifty (50) links; thence North along the Western boundary line of the tract conveyed by Helen M. Bishop to the President and Trustees of the Miami University on April 16, 1938, and recorded in Butler County records Volume 324, page 202, a distance of six (6) chains and seventy-five (75) links; from this point of beginning North along the West boundary line of said property conveyed by Helen M. Bishop to the President and Trustees of the Miami University a distance of six (6) chains and forty (40) links to a point; thence West a distance of three (3) chains and ninety-nine (99) links more or less to a point which is the Northeast corner of a tract conveyed by the Trustees of Oxford Township to Milton Jones recorded in Miami University records, Volume K, page 261; thence South a distance of two (2) chains and seventy-six (76) links more or less to a point; thence East a distance of one (1) chain and sixty (60) links; thence South a distance of one (1) chain and forty-six (46) links; thence West a distance of three (3) chains and forty-two (42) links; thence South to a point which point is a distance of six (6) chains and seventy-five (75) links North of the South line of said Lot Numbered five (5); thence east to the point of beginning, containing three and one-eighth ( $3\frac{1}{8}$ ) acres more or less, and being the same tract of land conveyed to Olive Gentry from Barbara Gage, March 20, 1930, Miami University Deed Record "R," pages 403-404.

With respect to the title of Olive Gentry to this parcel of land at the time of her death or, rather, to the perpetual leasehold interest therein of which she held the record title upon her decease, you will recall that on September 23, 1938, a short time prior to the death of Mrs. Gentry, I directed a communication to you on the original abstract of title submitted, in which communication I referred to the above described parcel of land and discussed the question of Olive Gentry's title to the same as follows:

"The above described parcel of land is apparently a part of Lot 6 of Abner Stilson's Subdivision of original Lot 5 of Oxford Township lands, although, as will be noted, this property is described in the deed wholly with reference to said original Lot 5. As to this, it appears that one Beverly Tyler became

the owner of a perpetual leasehold interest in the whole of said Lot 6 of Abner Stilson's Subdivision of said Lot 5 by warranty deed executed to him by James Irwin and wife under date of April 30, 1853. Beverly Tyler died intestate on or about the 22nd day of November, 1881. Thereafter, on June 17, 1896, his widow, Sarah A. Tyler, assumed to convey to one Jesse Pence a parcel of land in said Lot 6 under the following description as the same is set out in said deed:

Situate in County of Butler and State of Ohio, bounded and described as follows: a part of the lot or tract of land the same being  $3\frac{1}{8}$  acres of land in lot No. 5 in Section 23, Town 5, Range 1, in Oxford Township.

Said  $3\frac{1}{8}$  acres in the South part of lot known as No. 6 in the subdivision of said lot No. 5 as made by Abner Stilson.

Thereafter, on June 22, 1900, this property was conveyed by Jesse Pence and wife by the same description to one John B. May, who, on September 6, 1900, conveyed the property, likewise by the same description, to George Gage and Barbara Gage. George Gage died intestate some time in the year 1918, and his undivided one-half interest in this property apparently passed by inheritance to his widow, Barbara Gage, who by her last will and testament devised this property to Olive Gentry.

It appears, however, that at the time of the death of Beverly Tyler, intestate, on or about November 22, 1881, he left, beside his widow, Sarah A. Tyler, a number of children who inherited the property here in question subject to the dower interest of Sarah A. Tyler in and to this property. Although, as above noted, Sarah A. Tyler assumed to convey to Jesse Pence the whole of the perpetual leasehold interest which Beverly Tyler in his lifetime owned and held in this land, the only interest which she owned and held in this property at the time of her conveyance to Pence was an unassigned consummated dower interest in the property. In this situation, it is apparent that aside from the limitation imposed by law with respect to the right of a widow to convey to a stranger to the title dower consummate before assignment, it is clear that on any view Sarah A. Tyler could not convey any interest in this property which would survive her own life. It appears from the abstract of title submitted to me that Sarah A. Tyler is dead; but

the time of her death does not appear. Whatever the fact may be as to the time of her death, it follows on the facts above stated that Olive Gentry now has no valid record title to this property; although it may be that she and her predecessors in the apparent record title to this property have held the same in such manner that she has an independent title to the property by adverse possession. The abstracter in the preparation of the abstract of title submitted to me was apparently concerned only with the record title as disclosed by the several conveyances appearing of record; and did not set out in the abstract any facts which give me any information which would enable me to express any views on the question as to whether Olive Gentry now owns and holds an independent title to this property by adverse possession."

Following the communication to you above referred to, the abstracter submitted to me an affidavit in which one Edward Lowe, who has been a resident of the Village of Oxford, Ohio, for forty-six years, deposes to the fact that said Olive Gentry and her immediate predecessors in title, Barbara Gage and George Gage, have held actual possession of this property since the year 1900. And although the affidavit is not very explicit as to facts material in the consideration of the question whether Olive Gentry and her predecessors in title have held possession of this property under circumstances which made such possession adverse to the claims of the heirs of Beverly Tyler, above referred to, I am inclined to the view from all of the facts and attending circumstances disclosed by this abstract of title and the affidavit above mentioned, that Olive Gentry and her predecessors in title did hold this property adversely to such Tyler heirs and to all others, and that at the time of her death Olive Gentry had an independent title to this property by adverse possession.

On the death of Olive Gentry her title to this property passed by descent to her husband W. H. Gentry and to Hazel N. Hampton and Charles Edward Gentry, her heirs. On October 31, 1938, W. H. Gentry, as the duly appointed and qualified administrator of the estate of Olive Gentry, filed a petition in the Probate Court of Butler County, Ohio, for authority to sell the above described property to pay the debts of said estate. And, as above indicated, the sale of this property to the President and Trustees of Miami University was made pursuant to an order of court in said proceeding; and the administrator's deed above referred to has been executed by said administrator and tendered to the President and Trustees of Miami University pursuant to an order of said court confirming such sale. The proceedings in the Probate Court of Butler County, Ohio, relating to the sale of this property, appear in

the abstract of title as the same has been corrected, and I find that such proceedings are in all respects regular. I am of the opinion, therefore, that Olive Gentry at the time of her death had a good merchantable perpetual leasehold interest in the above described parcel of land; that the administrator's deed above referred to will, on acceptance, be effective to transfer such perpetual leasehold interest to the President and Trustees of Miami University; and that upon the delivery and acceptance of such deed the President and Trustees of the University as a corporation will own and hold an indefeasible fee simple title to this property. In this connection, it may be observed that whatever question may exist with respect to the title to this property as a title passing from or through Olive Gentry is set at rest so far as the President and Trustees of Miami University are concerned, by the fact that under date of August 30, 1938, Gertrude Couzzins and others, the sole and only living heirs of Beverly Tyler, deceased, executed and delivered to the President and Trustees of Miami University a quit claim deed conveying to said grantees the above described parcel of land and all their right, title and interest therein.

Upon examination of the administrator's deed tendered by W. H. Gentry, as administrator of the estate of Olive Gentry, deceased, I find that said deed has been properly executed in conformity with the orders and proceedings of the Probate Court of Butler County, Ohio, and the law applicable to sales of this kind, and that said deed has otherwise been executed and acknowledged in the manner provided by law. I further find upon examination of this deed that the form of the same is such that the same is legally sufficient to convey to the President and Trustees of Miami University as a body corporate the perpetual leasehold interest in this property which said Olive Gentry owned and held at the time of her death; and that, as above stated, said President and Trustees of Miami University as a corporation, upon the delivery and acceptance of this deed, will then own and hold this property in fee simple title subject only to the trust on and by which all property of said University is owned and held by it. It further appears from the abstract that by this transaction Miami University will take this property free and clear of all encumbrances except the taxes on the property for the last half of the year 1937, amounting to \$.24, and the undetermined taxes of the year 1938.

Contract encumbrance record No. 1669 was properly executed at the time and the same shows a sufficient balance in the land rents appropriation account to the credit of Miami University to pay the purchase price of the above described property, which purchase price is the sum of \$1,000.00. It is noted, however, that this contract encumbrance record is made out in the name of Olive Gentry as the contracting party. Since the execution of this instrument Olive Gentry has died and the present

contract for the purchase of this property is between Miami University and W. H. Gentry, as the duly appointed and qualified administrator of the estate of Olive Gentry, who has been authorized as such administrator to convey this property to the University. This contract encumbrance record and the several copies thereof should be corrected by substituting the name of W. H. Gentry, administrator of the estate of Olive Gentry, in place of the name of Olive Gentry, as it now appears.

Subject only to the suggested correction with respect to the contract encumbrance record, all of the files relating to the purchase of this property are approved and the same are herewith enclosed for your further attention in closing the transaction for the purchase of the property.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3197.

STATUS—RENTAL AGREEMENT, CITIZENS SAVINGS BANK OF MARTINS FERRY, OHIO, WITH STATE OF OHIO, THROUGH DIRECTOR, DEPARTMENT OF PUBLIC WORKS, SECOND FLOOR, BUILDING FOURTH AND WALNUT STREETS, MARTINS FERRY, OHIO, MONTHLY RENTAL \$75.00, USE, OHIO UNEMPLOYMENT COMPENSATION COMMISSION.

COLUMBUS, OHIO, November 8, 1938.

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

DEAR SIR: You have submitted for my examination and approval a so-called rental agreement executed by the Citizens Savings Bank of Martins Ferry, Ohio, in and by which there is rented to the State of Ohio, acting through you as Director of Public Works under the authority conferred upon you by Section 154-40, General Code, certain office space for the use of the Ohio Unemployment Compensation Commission in the City of Martins Ferry, Belmont County, Ohio, which premises so rented are described as follows:

Second floor space in the building at Fourth and Walnut Streets in Martins Ferry, Ohio, containing approximately 810 square feet.