

Abstracters, August 10, 1905, and continuations thereto made by J. G. Westwater, attorney, June 2, 1917, J. G. Westwater, attorney, January 29, 1919, E. M. Baldrige, attorney, September 4, 1923, and E. M. Baldrige, attorney, January 24, 1925, and pertains to the following premises:

Lot Number Thirty-eight (38) of Hamilton's Second Garden Addition to the City of Columbus, Ohio, as the same is numbered and delineated on the recorded plat thereof, recorded in Plat Book 7, page 186, Recorder's Office, Franklin County, Ohio, saving and excepting therefrom six feet off the rear end thereof, reserved for the purpose of an alley.

Upon examination of said abstract, I am of the opinion same shows a good and merchantable title to said premises in Pauline E. Carl, subject to the following exceptions:

The release of the mortgage shown at section 8 of the first part of the abstract is in defective form, but as the note secured by the mortgage has been long past due, no action could be maintained upon same. The release shown at section 14 is also defective, but shows that the notes secured by the mortgage were undoubtedly paid.

Attention is directed to the restrictions in the conveyance shown at section 1 of the continuation of June 2, 1917, wherein are found restrictions for a period of twenty-five years against the use of the premises for the erection of any buildings to be used for slaughter houses and the killing of animals, or the use of said premises for the sale of intoxicating liquors or malt beverages.

The abstract states no examination has been made in the United States District or Circuit Courts, nor in any subdivision thereof.

Taxes for the last half of the year 1924, amounting to \$5.07, are unpaid and a lien against the premises.

Attention is also directed to the unpaid balance of a special assessment on account of the improvement of Clara Street, amounting to \$56.98, the next installment of which, amounting to \$28.48, and interest, will be due and payable in December, 1925.

It is suggested that the proper execution of a general warranty deed by Pauline E. Carl and husband, if married, will be sufficient to convey the title to said premises to the State of Ohio when properly delivered.

Attention is also directed to the necessity of the proper certificate of the Director of Finance, to the effect that there are unincumbered balances legally appropriated sufficient to cover the purchase price before the purchase can be consummated.

The abstract submitted is herewith returned.

Respectfully,
C. C. CRABBE,
Attorney-General.

2200.

AUTHORITY OF DEPARTMENT OF PUBLIC WELFARE TO DRILL OIL AND GAS WELLS DISCUSSED.

SYLLABUS:

(1) *The Department of Public Welfare may not, without specific statutory authority, lease the lands under its jurisdiction for the purpose of drilling for oil or gas.*

(2) *There is no statutory authority for such lease by the Department of Public Welfare to drill on the property of Athens State Hospital.*

(3) *No fund is available from which the department may pay the expense of drilling a gas well on the Athens State Hospital farm.*

COLUMBUS, OHIO, February 5, 1925.

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

DEAR SIR:—I acknowledge receipt of your letter of recent date, as follows:

"I enclose herewith copy of a letter directed by me to Dr. John H. Berry, Superintendent of the Athens State Hospital, under date of September 10, 1924, and also a copy of a letter received from Dr. Berry on December 9, 1924. These have reference to the drilling of oil and gas wells from one to two and one-half miles west and southwest of the Athens State Hospital lands.

"It is the duty of this department to do everything we can to protect the State's interest by offset drilling on the State property, and the situation raises the question of the advisability and the right of the State to do one of two things:

"First, to secure sufficient funds, employ a skillful and experienced driller and do our own drilling.

"Second, to lease a part or all of the Athens Hospital farm for drilling purposes.

"May we have your opinion at an early date as to the right of the State to drill for oil and gas on State lands; also as to the right of the State to lease lands for the drilling of oil and gas, and the proper legal procedure to be followed?"

The right of your department to pursue either of the courses suggested in your letter depends upon the presence of some specific statutory authority for doing so, or upon the fact that such power is necessarily implied as a means of exercising a power which is specifically granted.

The second question which you raise seems to me to be very easily disposed of. The lease of the lands at the Athens Hospital farm is a conveyance of a right in the real estate belonging to the State of Ohio. There is no statutory authority for the Department of Public Welfare of Ohio to make any such conveyance. Wherever a department of state is authorized to make leases, a specific authority therefor is found in the statute. Special provision is made for the lease of canal and reservoir lands by section 13965, and following, of the General Code of Ohio. There is no analogous section with reference to such lands as the lands of the Athens State Hospital.

The answer to your second question, therefore, must be in the negative.

The first question presents a more difficult problem. So far as a general power to drill on these lands is concerned, such power, if it exists at all, must be limited to such drilling as might be reasonably necessary for the purposes of the State Hospital, and if an appropriation had been made making available funds for this purpose, it is my opinion that the department would have the right to drill on these lands for that purpose, and within those limits.

An examination of the appropriation bill passed by the 85th General Assembly, however, discloses that no appropriation was made which is available for such a purpose.

You are therefore advised in answer to your first question that since the General Assembly has made no appropriation which can be used for such purpose, your department is without authority to enter upon such a project.

Respectfully,

C. C. CRABBE,

Attorney-General.