

845.

APPROVAL, LEASE TO ABANDONED HOCKING CANAL LAND IN GREEN TOWNSHIP, HOCKING COUNTY—DAISY FERRENBURG.

COLUMBUS, OHIO, September 9, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a certain lease in triplicate, executed by the State of Ohio, through you as Superintendent of Public Works, by which there is leased and demised to one Daisy Ferrenburg a certain parcel of abandoned Hocking Canal land, consisting of sixty-six hundredths (.66) of an acre, more or less, in Green Township, Hocking County, Ohio, which tract is more particularly described in said lease.

The lease here in question, which is one for a term of fifteen (15) years, is executed by you under authority granted by the provisions of Sections 13965, et seq., 14152-3, and other related sections of the General Code.

An examination of the provisions of said lease show that said lease is in conformity with the statutory provisions above mentioned, and said lease is therefore approved as to form.

Under the provisions of Section 464, General Code, canal land leases executed by your department are subject to the approval of the Governor and the Attorney General. My investigation of the facts and circumstances relating to the lease of this property discloses no reason why the same should not be approved by me, and, said lease is therefore hereby approved, as is evidenced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,
Attorney General.

846.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF SOPHIA STICKNEY IN CARTHAGE, CINCINNATI, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, September 9, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title, warranty deed, encumbrance estimate No. 5272 and controlling board certificate relating to a certain parcel of land and the appurtenances thereunto belonging, owned and held by one Sophia Stickney in Carthage, Cincinnati, Ohio, and which property is more particularly described as follows:

“Situate in Section 12, Millcreek Township, fractional range No. 2, in the Miami purchase, Hamilton County, Ohio, in the village of Carthage, now part of the city of Cincinnati; beginning at a point on the west line of Franklin street, now Longview Street, 150 feet southwardly from the south line of Second street, now seventy-first street; thence westwardly on a line parallel with the south line of Second street, now Seventy-first street, 150 feet, more or less to a point; thence southwardly with the westwardly line of said prem-

ises 10 feet, more or less, to a point; thence eastwardly 150 feet, more or less, to the west line of Franklin street, now Longview street; thence northwardly with the west line of Franklin street, 10 feet, more or less, to the place of beginning."

An examination of the abstract of title submitted to me shows that on October 24, 1898, and for many years prior thereto, one Emily J. Stickney, widow of one David H. Stickney, deceased, owned the tract of land here in question together with a contiguous tract of land fronting sixty feet on Franklin street (now Longview street), the title to which latter tract of land was the subject of Opinion No. 731 directed to you under date of August 12, 1929, wherein said tract of land was described.

On the date above referred to, October 24, 1898, the said Emily J. Stickney conveyed to her son, William W. Stickney, the sixty foot tract of land fronting on Franklin street above referred to, and from a number of affidavits that have been submitted to me as a part of the abstract of title, there is some evidence indicating that at the time of this conveyance, said Emily J. Stickney intended to include in said conveyance to said William W. Stickney, the ten foot tract of land here under investigation. The fact remains, however, that this tract of land was not included in said conveyance and as to the same, said Emily J. Stickney died intestate on or about the 10th day of November, 1898, and upon her death the title to the tract of land here under investigation passed by descent to her living children and to such of her grandchildren as represented the interests of deceased children of said Emily J. Stickney as tenants in common of said tract of land.

It thus appears that during the lifetime of said William W. Stickney, he did not have record title to the tract of land here under investigation other than as to his undivided interest therein as one of the tenants in common of said land; and his title to the whole of this tract as well as that of the widow, Sophia Stickney, must rest upon an adverse possession of this land in such manner as to effectually bar the rights of the other cotenants in whom the title to said land vested on the death of said Emily J. Stickney.

Said William W. Stickney died intestate a number of years ago without issue, leaving his widow, Sophia J. Stickney, as his only heir. The facts set out in the affidavits filed with me show that more than thirty years ago said William W. Stickney after he obtained title to the sixty foot tract of land above referred to, fenced in the tract of land here under investigation, together with the sixty foot tract of land; that he built outhouses on the tract here under investigation, constructed sidewalks thereon and used the same as a vegetable garden with every indication of a claim of rightful and exclusive ownership of such tract, such as he had with respect to the sixty foot tract of which he was the record owner.

And it further appears that said William W. Stickney and his widow, Sophia Stickney, after him, occupied and held said premises continuously, openly and adversely to the claims of all other persons whomsoever, and that this use and occupancy upon their part was of common knowledge to the inhabitants of the village of Carthage and to all others concerned. From the facts presented, it appears that said William Stickney and his widow, Sophia Stickney, have held possession of this land in their own behalf adversely to said original co-tenants and to all the world besides; and that the adverse nature of such possession upon their respective parts has been evidenced by such overt act of an unequivocal character as clearly indicating an assertion of ownership of this entire tract to the exclusion of the rights of said cotenants and of others.

Upon the facts here appearing, I am of the opinion that said Sophia Stickney now has a good and merchantable fee simple title to the above described tract of land except the undetermined taxes for the year 1929.

An examination of the warranty deed submitted by Sophia Stickney, shows that the same has been signed by her and otherwise properly acknowledged and executed. However, there is a manifest error in the description of the tract of land herein under investigation as the same is set out in said deed.

In said deed this property is described as beginning at a point upon the west line of Franklin street, now Longview street, in said village of Carthage, one hundred fifty (150) feet south of Second street, now seventy-first street "at the west corner" of what was formerly known as lot No. 98 in the original plan of the village of Carthage by Edward White. It is quite plain that where the words "west corner" were used in said description, the words "southeast corner" were intended; and before this deed is accepted by the State the same should be corrected as above indicated.

An examination of encumbrance estimate No. 5272, shows that the same in all respects has been properly executed and that there are sufficient balances in the proper appropriation account to pay the purchase price of this property.

I do not find with the files submitted to me a certificate showing that the controlling board has released the purchase price of this tract of land from the appropriation therefor, but I assume that such action has been taken by the controlling board and that the certificate with respect to said action has been returned to you with the files in connection with the sixty foot tract of land referred to and described in former Opinion No. 731 of this department, above mentioned.

I am herewith returning to you said abstract of title, warranty deed and encumbrance estimate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

847.

CITY PLANNING COMMISSION—EXCLUSIVE JURISDICTION OF APPROVAL OF MAPS FOR TERRITORY WITHIN THREE MILES OF MUNICIPAL LIMITS.

SYLLABUS:

A city planning commission which has adopted a plan for the territory within three miles of the corporate limits thereof, has exclusive jurisdiction of the approval of plats and maps for the territory within three miles of the corporate limits of such municipality.

COLUMBUS, OHIO, September 10, 1929.

HON. DUSTIN W. GUSTIN, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads as follows:

"With reference to House Bill No. 276, of 113th Ohio Laws, designated as General Code Sections 3583, and 3583-1:

It will be noted that in Section 3583, appears the following:

'Provided however, that no map certifying lands outside of a municipal corporation, wherein the proprietor shall dedicate public highways, shall be entitled to be recorded without the approval thereon of the county commissioners of the county wherein such lands are situated. * * *