

tinued over or under a railroad. Whether said structure technically amounts to a bridge or a road, or both, it necessarily follows that it is a portion of a highway."

It is believed that the foregoing compels the conclusion that the motor vehicle license tax or the gasoline tax may be used for the purpose of employing engineers solely engaged in the preparation of plans and other matters in connection with the elimination of railroad grade crossings.

However, in this connection it may be mentioned that Section 5541-8 of the General Code, which relates to the distribution of the second gasoline tax, expressly provides that the state's share of the amount distributed thereunder may be used, among other things, "for supplying the state's share of the cost of eliminating railway grade crossings upon such highway". In view of the language last above mentioned a logical argument could be presented to the effect that the Legislature in said section, having expressly provided in the one instance for the use of said moneys in connection with the elimination of railroad grade crossings, intended to inhibit the use of such tax for such purpose in all other instances. However, I am not inclined to this construction for the reason that I regard this statement as a reiteration of a power that already existed. It may also be true that in view of the different provisions of law with reference to the power of the state to eliminate railway grade crossings there is some other reason for the express mentioning of this matter under this section. In any event in so far as municipalities are concerned, in view of the citations and discussions hereinbefore made, it would appear that the power exists to use such funds in connection with the construction of railway grade separation projects.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2051.

APPROVAL, ABSTRACT OF TITLE RELATING TO PROPOSED PURCHASE BY STATE OF OHIO OF CERTAIN TRACT OF LAND OF MINNIE M. DANIEL, CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, July 2, 1930.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted to me for my examination and approval, an abstract of title, warranty deed form and encumbrance estimate relating to the proposed purchase by the State of Ohio of a certain tract of land and the appurtenances thereunto belonging, which is owned of record by one Minnie M. Daniel, said property being situated in the city of Columbus, Franklin County, Ohio, and being more particularly described as follows:

"Being all of Lot No. Three (3) and part of Lot No. Four (4) in R. P. Woodruff's Subdivision of the South half of the S. half Lot No. Two Hundred Seventy-Eight (278) of R. P. Woodruff's Agricultural College Addition, as the same are numbered and delineated upon the recorded plat of said addition, of record in Plat Book 3, page 421, Recorder's Office, Franklin County, Ohio, said portion of Lot No. Four (4) being more particularly described as follows:

Beginning at a point in the east line of said lot, 13 feet north of the south end thereof; thence north along said east line 45 feet to a point; thence west 1.85 feet to a point in the center of the partition wall of the double dwelling house located on said lot No. 4 and lot No. 3 of said addition; thence in a southerly direction along the center line of said partition wall 45 feet more or less to a point 13 feet north of the south line of said lot and .4 feet west of the east line of said lot; thence east to the place of beginning."

Upon examination of the abstract of title submitted, I find that said Minnie M. Daniel has a good indefeasible fee simple title to the above described property, subject to the inchoate dower interest of her husband, John J. Daniel, but free and clear of all encumbrances except the following, which are noted as the only exceptions to the title of said Minnie M. Daniel to the above described property:

(1) On March 3, 1928, said Minnie M. Daniel, under her then name of Minnie M. Brush, she being then a widow, executed a mortgage deed on the above described property to the Buckeye State Building and Loan Company, to secure the note and obligation of said mortgagor of even date therewith in the sum of \$2400.00, payable in monthly installments of \$24.00 each. This mortgage is not satisfied of record and the same to the extent of the amount remaining unpaid upon the obligation secured thereby is a lien upon this property.

(2) The taxes for the last half of the year 1929, amounting to the sum of \$47.95, are unpaid and a lien upon the property. Likewise, the taxes for the year 1930, the amount of which is as yet undetermined, are a lien upon this property.

With said abstract of title there has been submitted to me a deed form of the warranty deed to be executed by said Minnie M. Daniel and John J. Daniel, her husband. This deed form is such that when the same has been properly executed and acknowledged by said Minnie M. Daniel and John J. Daniel, it will operate to convey to the State of Ohio a fee simple title to the above described property free and clear of the dower interest of said John J. Daniel, and free and clear of all encumbrances except such taxes and assessments as may be due and payable on and after December 30th.

As above indicated, this deed has not yet been executed, and care should be taken to see that the same is properly executed and acknowledged before the transaction relating to the purchase of this property is closed.

There has likewise been submitted to me encumbrance estimate No. 562 covering the purchase price of this property. An examination of said encumbrance estimate shows that the same has been properly executed and that there are sufficient balances in the proper appropriation account to pay the purchase price of this property which purchase price is the sum of \$4250.00.

It is further noted that there is a recital in said encumbrance estimate that the purchase of this property has been approved by the Board of Control.

I am herewith returning said abstract of title which is hereby approved, subject to the exceptions above noted, and with said abstract of title I am returning with my approval said warranty deed form and encumbrance estimate No. 562.

Respectfully,

GILBERT BETTMAN,
Attorney General.