

And lastly, see Opinions, Attorney General, 1931, Vol. II, p. 944, *supra*; and *Hommel v. Village of Woodsfield*, *supra* (122 O. S. 148), the syllabus of which reads:

“1. Where the board of public affairs of a village has contracted for the delivery to such village of supplies or material, without authorization and direction by ordinance of council and without advertising for bids as required under Sections 4328 and 4361, General Code, such contract imposes no valid obligation upon the village. (*Ludwig Hommel & Co. v. Incorporated Village of Woodsfield*, 115 Ohio St., 675, 155 N. E., 386, approved and followed.)

2. In such case, an action for conversion of such supplies and material, praying for a money judgment, cannot be maintained against the village. (*Frisbie Co. v. City of East Cleveland*, 98 Ohio St., 266, 120 N. E., 309, approved and followed.)”

In view of the foregoing, and upon the precedents cited and for the reasons given, in specific answer to your questions you are advised that:

1. I do not concur in the holding of Opinion No. 3517, to the effect that local subdivisions are without authority to recognize claims as moral obligations and provide for and pay them as such moral obligations; and

2. The Bureau of Inspection and Supervision of Public Offices, through the State Examiners, is not required to render findings for recovery jointly, against members of the municipal legislative body and the recipients, for payments allowed and made as moral obligations.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1331.

DEED—TO STATE BY JAMES N. WAITS AND STELLA M. WAITS, DESIGNATED LAND, BENTON TOWNSHIP, HOCKING COUNTY, TWO TRACTS, USE, DIVISION OF FORESTRY.

COLUMBUS, OHIO, October 24, 1939.

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

DEAR SIR: You lately submitted to this office for examination and approval an abstract of title, warranty deed, contract encumbrance record

No. 84, real estate option and other files relating to a tract of land which is owned by James N. Waits and Stella M. Waits, husband and wife, and situated in Benton Township, Hocking County, Ohio, and which land is more fully described in the deed which has been tendered to the State of Ohio, as:

“First Tract: Being Fractional Lot No. 5 in Section No. 5, Township No. 11, Range No. 18, containing 31.71 acres, more or less; also part of the West half of the Southeast quarter of the same section, beginning at the Northeast corner of said half quarter; thence west 20.81 chains to the Northwest corner of said half quarter; thence south 6.11 chains; thence south 79° east 1.05 chains; thence south $62\frac{1}{4}^{\circ}$ east 2.98 chains; thence south $45\frac{1}{2}^{\circ}$ east 166 chains; thence south 56° east 1.16 chains; thence south 85° east 2.06 chains; thence south $82\frac{1}{2}^{\circ}$ east 3.22 chains; thence south $79\frac{1}{2}^{\circ}$ east 10.02 chains; thence north 11.82 chains to beginning, containing 20.09 acres, more or less, and containing in all 51.80 acres, more or less, and being the same lands conveyed by Homer W. Kitchen and wife to Floyd E. Brown by deed dated the 21st day of March, 1917, and recorded in Vol. 48, page 527, Record of Deeds, Hocking County, Ohio.

“Second Tract: Being the east half of the southeast quarter of Section No. 5, Township No. 11, Range No. 18, containing 71 acres, more or less, and being the same lands conveyed by Alvedore Bainter and wife to Floyd Brown by deed dated April 2, 1921, and recorded in Vol. 53, page 589, Record of Deeds, Hocking County, Ohio.”

Upon examination of the abstract of title submitted, which abstract of title is certified by the abstractor under date of June 24, 1939, I find that as of said date James N. Waits and Stella M. Waits, as tenants in common, had a good merchantable fee simple title to the above described tract of land and that they owned and held the same free and clear of all encumbrances except the taxes on the property which are a lien, and provision should be made before closing the transaction for the payment of all taxes, current and delinquent.

The abstract of title should be brought up to date inasmuch as four months have elapsed since the date of the certification and a check should be made by the abstractor in the proper offices of Hocking County, Ohio, to ascertain whether any liens or other encumbrances have been placed or charged against this property since the date of the certification. Likewise, as a matter of precaution, you or your agents in charge of negotiations for the acquisition of this property should note whether there have been any recent building operations on this property which might result in the

filing of mechanics' lien or liens covering labor or materials furnished on such building construction.

I assume that James N. Waits and Stella M. Waits, the owners of record of the aforementioned property, are in actual physical possession of this property. As to this, it is to be observed that if any other person or persons are in possession of this property or of any part thereof under claim of right, the State of Ohio and you as the authorized officer and agent of the State, would be required to take notice of the rights, if any, of such third persons, whatever such rights may prove to be. This question is pertinent in view of the fact that there is no record of any conveyance in regard to the second tract of land containing seventy-one acres of land, by John A. Collins, the original grantee, who acquired title from the United States Government in the year 1843, and the chain of title then proceeds from Abraham Lindsey and Katherine Lindsey, in the year 1849 to the present record title holders, and I am assuming that all record title holders subsequent to Abraham Lindsey and Katherine Lindsey were in actual open, notorious and exclusive possession of the real estate known as the second tract.

In reference to the property known as tract number one in the abstract of title, I find that while James L. Fox, was the record title holder the real estate taxes were permitted to become delinquent and were sold by the Auditor of Hocking County to Mariah Palmer and said Mariah Palmer conveyed said lands to Joshua Childers. However, upon the death of James L. Fox, which occurred in the year of both conveyances, the same property was sold by A. W. Mauk, as Administrator of the Estate of James L. Fox, deceased, to Nicholas Bowers, and the chain of title is unbroken up to the present record title holder. In the land sales proceedings brought by A. W. Mauk as Administrator of the Estate of James L. Fox, deceased, both Mariah Palmer and Joshua Childers were party defendants, and I am assuming that while no certificate of redemption is of record and no mention of same is made in the abstract that both Mariah Palmer and Joshua Childers' interests in said property as heirs of the decedent, James L. Fox and as defendants were set up in the land sales proceedings and properly taken care of in the entry of confirmation and distribution in the sales case or in the entry of distribution in the estate proper.

I am likewise assuming in regard to tract number one, that all of the succeeding record title holders following Nicholas Bowers were in actual, open, notorious and exclusive possession of this tract of land.

Upon examination of the warranty deed tendered by James N. Waits and Stella M. Waits, the owners of this property, I find that the same has been properly executed and acknowledged by the grantors. I further find that the form of this deed is such that the same is legally sufficient to convey the above described property to the State of Ohio, as the grantee therein named, by fee simple title, free and clear of inchoate dower

interest with a covenant on the part of the grantors that the property is conveyed to the State of Ohio, free and clear of all encumbrances.

Upon examination of encumbrance record No. 84, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the proper appropriation account to the credit of the Division of Forestry—Rotary A—to pay the purchase price of this property, which purchase price is in the sum of \$1,228.00.

Subject to the foregoing exceptions above noted, and with respect to the taxes, current and delinquent, the title is hereby approved, likewise the warranty deed, contract encumbrance record and other files submitted in this connection, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1332.

BONDS—CUYAHOGA COUNTY, \$5,000.00.

COLUMBUS, OHIO, October 24, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN: .

RE: Bonds of Cuyahoga County, Ohio, \$5,000.00.

The above purchase of bonds appears to be part of one or more of three issues of Series A Refunding Bonds of the aggregate amounts of \$735,000, \$760,000 and \$2,740,000, respectively, of the above county dated October 1, 1938. The transcript relative to the above issues was approved by this office in an opinion rendered to the State Teachers Retirement Board under date of October 8, 1938, being No. 3056.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said county.

Respectfully,

THOMAS J. HERBERT,
Attorney General.