

by prison labor, made in and by House Bill No. 517, enacted by the 86th General Assembly March 27, 1925, and effective July 1, 1925. It is apparent that the appropriation above referred to had lapsed prior to the action of the controlling board under date of July 20, 1927, authorizing the purchase of the tract of land here in question out of said appropriation. However, the records of the controlling board show that you addressed a communication to said board under date of June 17, 1927, before said appropriation had lapsed, requesting said board of control to approve the purchase of this land. I assume from this that there had been such negotiations or other transactions between your department and the owner of this land relating to the purchase of the same out of this appropriation as to constitute a contingent liability against said appropriation within the meaning of section 2 of House Bill No. 502 of the 87th General Assembly, which provides that "unexpended balances of all appropriations and reappropriations, made by the 86th General Assembly, against which contingent liabilities have been lawfully incurred, are to the extent of such liabilities, and whether the same have been lapsed prior to the taking effect of this act with respect thereto or not, hereby appropriated from the funds from which they are originally appropriated or reappropriated and made available for the purpose of discharging such contingent liability."

With this assumption the proceedings of your department and of other authorities of the State of Ohio relating to the purchase of these lands, as well as the abstract of title and warranty deed for said lands, are hereby approved.

I am returning herewith said corrected abstract of title, deed, estimate and controlling board certificate.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2337.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF R. O. ELSEA AND OTHERS, IN BENTON AND MIFFLIN TOWNSHIPS, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, July 10, 1928.

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

DEAR SIR:—Recently there was submitted to this department for examination and opinion an abstract of title and a warranty deed covering certain lands situated in Benton and Mifflin Townships, Pike County, Ohio, and more particularly described as follows:

"Beginning at three hickories in the original of the Survey corners and tract of land sold to R. Watts; thence N. 66 W. 97 poles to an ash and hickory corner to said Watts in the line of Joshua Anderson's land, thence N. 24 E. 200 poles to two hickories and walnut, corner to A. Ellison's Survey No. 377; thence S. 34 E. 97 poles to a stake corner to said survey; thence S. 24 W. 200 poles to the place of beginning, containing 121½ (one hundred and twenty one and one quarter) acres of land more or less, being part of N. Massie's Survey No. 15642 on the waters of Sunfish;

Also another tract of adjoining land bounded and described as follows: Beginning at a white oak 3 ash and 1 elm S. W. corner of the original tract

thence S. 53½ E. 37 poles to 2 gums and a hickory and ash; thence S. 24 E. 60 poles to 2 gums and a hickory tree; thence S. 64 E. 15 poles to 2 gums; thence N. 24 E. 118 poles to 3 hickories; thence N. 33 W. 97 poles to a hickory and ash; thence S. 24 W. 64 poles to the place of beginning containing 57½ acres (fifty-seven and one-half) acres of land more or less, being part of N. Massie's Survey No. 15642."

Upon examination of the abstract submitted to me, I find that R. O. Elsea, Sam C. Elsea and Grace L. Barnhart are the owners of record of the above described lands, subject to the dower interest of Caroline Elsea, widow of Creighton R. Elsea, deceased, and subject to the inchoate dower interest of the respective consorts of the children and heirs of the said Creighton R. Elsea, above named.

The original source of the title placed in this abstract was and is a survey of land calling for seventy-five acres made for one Nathaniel Massie under date of May 23, 1849. All of the lands here under consideration are within this survey, which has been carried as Survey No. 15642 in the maps and records of the lands of said county. The lands here in question were and are in the Virginia Military District and the abstract of title submitted is open to objection for the reason that the same fails to show that said original survey made for Nathaniel Massie was ever returned to the Land Office for patent or that any patent was ever issued thereon. In the case of *Coan vs. Flagg*, 123 U. S. 117, it was held that it was essential to the vesting of any interest under an entry and survey within the Virginia Military Land District, made prior to January 1, 1852, that the survey should be returned to the commissioner of the General Land Office at Washington on or before that date for patent; and that the failure to do so discharged the land from any claim founded on such location and survey. See also *Fussell vs. Gregg*, 113 U. S. 550. However, I do not deem it necessary to express at this time any final opinion upon the question arising out of the fact that the abstract fails to show that any patent has issued on the entry and survey above referred to for the reason that it is altogether possible that such patent was in fact issued. As to this, it is suggested that the abstract be returned to the heirs of Creighton R. Elsea with instructions to ascertain whether or not such patent was ever issued. If this fact cannot be ascertained from the appropriate records of Pike County, it may be done by inquiry of the Government Land Office at Washington.

The abstract shows that the said Creighton R. Elsea, who died intestate on the 5th day of April, 1928, he being at that time the owner of the above described land, left surviving him his widow, Caroline Elsea, and three children, the above named R. O. Elsea, Sam C. Elsea and Grace L. Barnhart, who as his heirs succeeded to his interest in the above described lands. On April 30, 1928, administration was granted on the estate of the said Creighton R. Elsea by the Probate Court of Franklin County, Ohio. The abstract does not show what proceedings have been had for the ascertainment of the inheritance tax that may be due and payable by reason of the succession to the estate of said Creighton R. Elsea on his death. Any such inheritance tax found to be due and payable will, of course, be a lien on such lands.

In the certificate of the abstractor to said abstract, certified under date of May 10, 1928, there is a recital that the records and duplicates in the treasurer's office show the taxes on said lands are fully paid. I am not at all certain as to what is meant by this recital. However, I am quite certain that the taxes for the year 1928 have not been paid and that the same are a lien on said land.

In the warranty deed signed by Caroline Elsea and the heirs of Creighton R. Elsea, deceased, there is a recital that the consideration for said deed conveying said lands to the State of Ohio is the sum of \$1,519.37. The certificate of the Controlling

Board and the encumbrance estimate submitted with respect to the purchase of said lands show that the purchase price of the same is the sum of \$1,434.38. This amount should not, of course, be exceeded in any payment made by your department for said lands.

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

Respectfully,
EDWARD C. TURNER,
Attorney General.

2338.

APPROVAL, ABSTRACT OF TITLE TO LAND OF EDSON O. KERNS AND WIFE, IN HOCKING TOWNSHIP, FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, July 10, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, submitting for my examination and opinion a corrected abstract of title and a warranty deed executed by Edson O. Kerns and Christena Kerns, his wife, covering certain lands and premises in Fairfield County, Hocking Township, and more particularly described in Opinion No. 2236, addressed to you under date of June 16, 1928.

Upon examination of the corrected abstract of title, I find that said Edson O. Kerns and Christena Kerns are the owners and tenants in common of said lands and premises and that they have a good and indefeasible fee simple title thereto, subject only to the following exceptions:

1. It appears from the abstract that said lands and premises are subject to encumbrances arising out of two separate leases executed and delivered by Jacob Leui to the Ohio Fuel Supply Company while he was the owner of said property. The first of said leases is one under date of April 28, 1917, granting to the Ohio Fuel Supply Company the right to lay, maintain and operate pipe lines in and over said premises, while the other lease, which is dated February 27, 1920, grants to said company, its successors and assigns, the right to drill for and take oil and gas from said premises for a period of twenty years, or as long as oil and gas are found in marketable quantities. How far said leases have been acted upon by the Ohio Fuel Supply Company does not appear and there are no facts set out in said abstract from which it can be inferred that either of said leases have been abandoned. How far the operations of said the Ohio Fuel Supply Company or its successors and assigns will interfere with the use of these lands is a matter which you must decide.

2. The taxes for the last half of the year 1927, due and payable in June, 1928, have been paid. The taxes for the year 1928, the amount of which is undetermined, are unpaid and are a lien on said premises.

Warranty deed for said lands, executed and acknowledged by said Edson O. Kerns and Christena Kerns, as well as the encumbrance estimate and the certificate of approval of the purchase of said lands by the controlling board, were all examined and approved on the occasion of the former opinion of this department, above referred to.

I herewith return the abstract of title and warranty deed.

Respectfully,
EDWARD C. TURNER,
Attorney General.