1232.

APPROVAL, BONDS OF CLAY TOWNSHIP RURAL SCHOOL DISTRICT, SCIOTO COUNTY, $4,308.33, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, February 26, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1233.

APPROVAL, BONDS OF JEFFERSON TOWNSHIP RURAL SCHOOL DISTRICT, ROSS COUNTY, $15,000.00, TO ERECT SCHOOL BUILDING.

COLUMBUS, OHIO, February 26, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1234.

APPROVAL OF TITLE OF DEED FOR HARLEM TOWNSHIP SCHOOL DISTRICT TO SELL CERTAIN PREMISES CONVEYED TO IT, WHEN FINISHED WITH SAME.

COLUMBUS, OHIO, February 26, 1924.

HON. B. P. BENTON, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—Yours of recent date received, with which you submit copies of deeds conveying certain premises to the Harlem Township board of education of your county and submit the following inquiry concerning same:

> "Does the deed hereinafter set forth convey such title to the premises described as will enable the present board of education of the Harlem township school district to sell and convey a fee simple estate when the board no longer needs such premises."

Your question necessitates an analysis and consideration of the pertinent parts of the deeds in question.

The first deed bears date of August 30, 1854, the second deed is by the same grantors as the first and bears date of April 9, 1890. The two deeds as indicated in your letter cover the same premises in part, the second deed being for a considerable larger tract and including and surrounding the tract described in the first deed.

The first deed is a regular warranty deed and I believe conveys a fee simple estate except for the peculiar language in the execution clause, which reads as follows:

> "In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written. The above described lot is sold for a district school house to be *bilt* on and for no other purpose if not used for that purpose to fall back to said Edwards."

This language might raise some question except for the fact that thirty-six years later the same grantors, by the second deed here under consideration, same being a regular warranty deed, conveyed the larger tract, including the premises conveyed in the first deed.

Therefore, I am of the opinion that if an examination and analysis of the second deed mentioned conveys a fee simple title, the defect in the first deed, if there is one, would be thereby cured.

Giving attention to the second deed, I find the granting clause and other parts thereof read as follows:

> "KNOW ALL MEN BY THESE PRESENTS: That John Edwards and Elizabeth Ann Edwards, his wife, of the County of Delaware and State of Ohio, in consideration of the sum of seventy-five dollars to us paid by the board of education of Harlem Township, Delaware County, Ohio, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to the said Board of Education of Harlem Township, Delaware County, Ohio, their successors and assigns, the following real estate situated in the County of Delaware in the State of Ohio and in the township of Harlem, so long as said lot hereafter described shall be used for school purposes, and bounded and described as follows: (then follows description of land conveying ninety-six rods.)
>
> To Have and To Hold said premises with all the privileges and appurtenances thereunto belonging to the said board of education of Harlem township, Delaware County, Ohio, their successors and assigns, so long as said lot is used for school purposes.
>
> And the said John Edwards and Elizabeth Ann Edwards for themselves and their heirs do hereby covenant with the said board of education of Harlem Township, Delaware County, Ohio, their successors and assigns that they are lawfully seized of the premises aforesaid; that said premises are free and clear from all incumbrances whatsoever and that they will Warrant and Defend the same with the appurtenances, unto the said board of education of Harlem township, Delaware County, Ohio, their successors and assigns, against the lawful claims of all persons whomsoever.
>
> In Witness Whereof, the said John Edwards and Elizabeth Ann Edwards, his wife, who hereby release their right of dower in the premises have hereunto set their hands this 9th day of April, in the year of our Lord one thousand eight hundred and ninety.
>
> Signed and acknowledged in the presence of:
> Allie Edwards
> James Cockrell, Jr.
>
> his
> John X Edwards
> mark
> Elizabeth Edwards."

(Then follows acknowledgment in due and proper form, executed before James Cockrell, Jr., Justice of the Peace.)

In analyzing this deed, your attention is first directed to the completeness of same. Apt and skillful language is used in every particular. The consideration named (the sum of $75.00) may have been an adequate sum for the amount of land conveyed, a trifle over one-half acre. The language of the granting clause is clear cut and definite and clearly conveys the premises to the board of education in question, their successors and assigns. In the habendum clause the grantors covenant for themselves, their heirs, executors and administrators, that they are lawfully seized of the premises, that said premises are free and clear from all incumbrances whatsoever, and that they will warrant and defend the same with the appurtenances unto the said board of education of Harlem township, Delaware County, Ohio, their successors and assigns. The wife releases dower. The instrument is duly and regularly signed in the presence of two witnesses and properly acknowledged by the grantors. Absolutely no language in any wise limiting a fee simple estate is used other than the words "so long as said lot hereafter described shall be used for school purposes." This language appears in the granting clause and is repeated a second time in the habendum clause. I am of the opinion that these words standing alone as they do in the deed in question, do not create a condition. A condition is not created by a restriction of the use of property without a clause of re-entry or of forfeiture. (Ashland vs. Greiner, et al., 58 O. S., 67.)

There is no such clause of re-entry or of forfeiture in the deed in question. The deed here under consideration is clearly a full and complete general warranty deed. In the granting clause the grantors recite a consideration, for which he proceeds in the same clause to "grant, bargain, sell and convey" unto said board of education the premises described. This language clearly conveys all of the interest of the grantors and indicate they intend to and do part with the entire estate in the premises without reservations or conditions; and further, in the covenant clause of said deed the grantors covenant to warrant and defend the title of said premises unto said board.

In the case of Larwill et al vs. Farrelly, 8 Ohio App. Rep., 356, the syllabus reads:

"The use in a deed of general warranty of the words, 'for the use and sole purpose of the Catholic church and such other erections as may be needed for the use of said Catholic church,' does not constitute a condition subsequent or engraft a limitation upon the title, but at most is a mere suggestion or unenforceable request or desire."

From the opinion in this case the following discussion is quoted:

"A condition will not be raised by implication from a mere declaration contained in an instrument that the grant is made for a particular or certain purpose, unless it is coupled with words clearly showing upon their face such a condition.

"In a warranty deed, such as the one now before us for construction, which contains the usual words of warranty and alienation of title of grantors, the law presumes that all of the grantor's title and interest in the real estate described in said instrument passes to the grantee, unless by some plain language used therein the contrary is shown.

"Conditions which in any way have a tendency to destroy or lessen estates are not favored by the law, and thus are strictly construed, and all doubts are resolved against restrictions.

"While it is true that no precise form of words is necessary or essential to create a condition subsequent, nevertheless, if in a deed, it must be created by such terms as to leave no doubt of the intentions of the grantor so to do.

"The language used by the grantors in the deed in the case at bar is clear, plain and unambiguous, and there is no doubt about its meaning, but, as we interpret and construe it, falls far short of being sufficient to create a condition subsequent.

"So far as creating limitations upon the title conveyed, it certainly does not do so. In legal effect it has no force, and the most that can be claimed for it is that it might be construed as a mere wish or desire on the part of the grantors to have the property used for the purposes indicated by the language; but in effect it is a mere suggestion, an unenforceable request or desire.

"An examination of the deed nowhere discloses any language that could be construed as intended to create any limitation upon the fee simple title in the grantees, their heirs and assigns, and we find no reservations or limitations contained in said deed.

"It is generally known that, when an estate granted is intended to be terminated or forfeited, certain terms are used in the granting clause, or somewhere in the deed, declaring that the estate conveyed is to be forfeited 'in the event that' certain conditions are not complied with. But in the deed now before us there is an utter absence of any such provisions."

Attention is also directed to a former opinion of this department, found in Opinions of the Attorney General for 1920, Vol. 2, p. 1206.

In view of the discussion in that opinion, involving a somewhat similar question, and the authorities above cited, I am of the opinion that the deed you submit conveys a fee simple estate and that the words in the granting and habendum clause of the deed, to wit, "so long as said lot is used for school purposes," do not create a condition subsequent, but are at most descriptive of a suggestive use for which the land was granted; and that the board of education can sell the buildings and grounds and convey a good and sufficient fee simple title to same.

Respectfully,
C. C. CRABBE,
Attorney General.

1235.

LICENSE—TRAFFICKING IN CIGARETTE WRAPPERS—SECTIONS 5894 AND 5898 CONSTRUED.

SYLLABUS:

1. *Where a dealer is trafficking in cigarette wrappers without a license as required by section* 5894, *General Code, the county auditor should make his charge on the duplicate from the time it was shown that the person actually trafficked in cigarettes.*

2. *The county auditor should make his charge under section* 5898, *General Code.*