

1164.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED,
AND CONTRACT ENCUMBRANCE RECORD RELATING
TO THE PROPOSED PURCHASE OF LAND IN FRANK-
LIN TOWNSHIP, ROSS COUNTY, OHIO.

COLUMBUS, OHIO, September 16, 1937.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Ex-*
periment Station, Columbus, Ohio.

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a corrected abstract of title, warranty deed, contract encumbrance record No. 52 and other files relating to the proposed purchase for and in the name of the State of Ohio of a tract of land which is owned of record by one Donald McBeth in Franklin Township, Ross County, Ohio, and which is more particularly described as follows:

Beginning at the southeast corner of Elijah Nunley's land in the township road; thence with his south line north 51° east 116.7 poles to a stone in said line; thence south 33° east 70.5 poles to a large white oak near the top of the ridge; thence south $41\frac{1}{2}^{\circ}$ east 15.6 poles to a white oak; thence south 62° east 47.2 poles to a stone; thence south 39° east 40 poles to a stone; thence south 57° west 127 poles to a stone; thence north 44° west 67 poles to two white oaks; thence north 30° west 60.5 poles to a stone on the west side of the run; thence north 41° west 29 poles to the place of beginning, containing 100 acres of land more or less and being a part of surveys Nos. 10696 and 14523.

With the privilege of a gateway out and into said premises on the northeast side of said land following a small branch down township road.

Excepting therefrom the following described tract conveyed by Levina Nunley, widow to William Nunley, by deed dated March 25, 1890, and recorded in volume 107, page 471, deed records of said county: Beginning at a large white oak near the top of the ridge; thence south $41\frac{1}{2}^{\circ}$ east 15.6 poles to a white oak; thence south 62° east 47.2 poles to a stone; thence south 39° east 40 poles to a stone; thence south 57° west 127 poles to a stone; thence north bearing east 135

poles more or less to the place of beginning, containing 35 acres of land more or less.

Also excepting therefrom the following described tract conveyed by Levina Nunley to Ladonna D. Boblett by deed dated January 28, 1891, and recorded in volume 110, page 175, deed records of said county: Beginning at a large white oak on top of the ridge and corner to William Nunley's land; thence north 33° west 70.5 poles to a stone in the township road; thence with said road south 50° west 38 poles more or less to a stone in said road; thence south 35° east 75 poles more or less and running parallel with the first named line and past a large sycamore tree, which said tree said parties to this deed have agreed shall be a center line tree to William Nunley's west line; thence with William Nunley's said line in a northerly direction 40 poles more or less to the place of beginning, containing 15 acres of land more or less.

Also excepting therefrom the following described tract conveyed by Levina Nunley to Ann Bivens by deed dated January 28, 1891, and recorded in volume 111, page 418, deed records of said county: Beginning at the southwest corner of the tract of which this is a part; thence southeast 40 rods to a stone; thence northeast 20 rods to a stone; thence northwest 40 rods to a stone; thence southwest 20 rods to the place

Also excepting therefrom the following described tract conveyed by Myron Evans to Hilbert Hartley by deed dated February 21, 1905, and recorded in volume 147, page 84, deed records of said county: Beginning at a white oak between Anjuilla Bivens and Hilbert Hartley; thence northeast to a stone on McArthur's survey No. 7725; thence south to a stake on Myron Evans; thence west to a stake on Hilbert Hartley; thence north to the place of beginning, containing 1 acre more or less.

Said premises being subject to legal highways.

As noted in your communication, the title of Donald McBeth to the above described tract, which comprises forty-four acres of land, was disapproved by this office in Opinion No. 6247 directed to you under date of October 26, 1936, for the reasons therein stated. After the rendition of this opinion, to wit, on March 20, 1937, Donald McBeth filed an action in the Common Pleas Court of Ross County against Austin Evans and others therein named, the same being Case No. 20684 on the docket of said court, to quiet his title with respect to the outstanding interests noted in the former opinion above re-

ferred to as then existing defects in his title to this property. Without discussing at length this proceeding instituted by Donald McBeth to quiet his title to this property, I am of the opinion that said proceedings were in all respects regular and in conformity to law and that the judgment made and entered by the Common Pleas Court of Ross County in this proceeding was and is effective to quiet his title to this property as against the objections noted in the former opinion.

I am accordingly of the opinion that Donald McBeth has a good merchantable title to the above described tract of land and that he owns and holds the same free and clear of all encumbrances except the undetermined taxes on the property for the year 1937.

Upon examination of the warranty deed tendered by Donald McBeth, a single man, I am of the opinion that said deed has been properly executed and acknowledged by said grantor and that the form of this deed is such that the same is legally sufficient to convey this property to the State of Ohio by fee simple title with the covenant of warranty therein contained that the property is free and clear of all encumbrances whatsoever.

Upon examination of contract encumbrance record No. 52, which has been submitted as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance in the rotary fund to the credit of the Division of Forestry of your department in the hands of the Treasurer of State to pay the purchase price of this property, which purchase price is the sum of \$440.00. Inasmuch as the purchase price of this property is to be paid out of funds in the hands of the Treasurer of State to the credit of the Division of Forestry which funds have been realized in the manner provided by House Bill No. 571, Sections 1173-6, at seq., General Code, no approval of the purchase of this property by the Controlling Board was or is necessary.

I am herewith returning to you the corrected abstract of title, warranty deed, contract encumbrance record No. 52 and other files in my hands to the end that further action may be taken by your department in the matter of closing the transaction for the purchase of this property.

Respectfully,

HERBERT S. DUFFY,

Attorney General.