

and that the provisions thereof are in conformity with Section 472-1, General Code, and with other statutory provisions relating to leases of this kind. Said lease is accordingly approved by me as to legality and form, which approval is evidenced by my authorized signature upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2254.

APPROVAL, ABSTRACT OF TITLE TO LANDS OF RANDAL B. POTTER
IN SALEM TOWNSHIP, CHAMPAIGN COUNTY, OHIO.

COLUMBUS, OHIO, August 22, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title, together with a copy of a deed executed by the sheriff of Champaign County, Ohio, encumbrance estimate No. 1124 and certificate of the Controlling Board under date of July 7, 1930, all relating to a certain tract of 429.07 acres of land situated in Salem Township, Champaign County, Ohio, which property was recently purchased by the State of Ohio through the Division of Conservation of the Department of Agriculture. The property in question, is more particularly described as follows:

“Being a part of Section Seventeen (17), Township Five (5), Range Twelve (12).

‘Beginning at a stone at the Southwest corner of said Section 17; thence in a northerly direction with the west line of said Section 17, a distance of 3352.1 ft. to a stone in the center of the township road; thence in an easterly direction with an interior angle of 88 deg. 05' a distance of 5654.8 feet to an iron pipe in the east line of said Section 17, at the intersection of the Township Road and the Kingscreek and Mt. Tabor pike; thence in a Southerly direction with an interior angle 89 deg. 50' a distance of 3331.7 feet to a stone at the southeast corner of said Section 17; thence in a westerly direction with an interior angle of 90 deg. 22' a distance of 5533.0 ft. to the place of beginning. Said tract containing 429.07 acres.’”

Upon examination of the abstract of title submitted to me, which abstract is certified by the abstracter under date of July 15, 1930, supplemented by journal entries of orders made by the Common Pleas Court of Champaign County confirming the sale of this property to the State of Ohio, I find that on February 25, 1930, when the court proceedings which resulted in the sale of this property to the State of Ohio were instituted in the Common Pleas Court of Champaign County, Ohio, one Randal B. Potter had a good and indefeasible fee simple title to the above described property, free and clear of all encumbrances except a certain mortgage executed by Sarah Farbman and Louis Farbman, her husband, to the Ohio-Pennsylvania Joint Stock Land Bank of Cleveland under date of October 1, 1927, at which time said Sarah Farbman was the owner of the fee simple title to said property. This mortgage was in the sum of \$25,000, and the property here under investigation was purchased by said Randal B. Potter, subject to said mortgage which he assumed and

agreed to pay. There having been a default in the conditions of said mortgage, the Ohio-Pennsylvania Joint Stock Land Bank of Cleveland, the owner and holder of said mortgage instituted proceedings for the foreclosure of the mortgage and the sale of said property to pay said mortgage indebtedness by filing its petition for this purpose against Sarah Farbman, Louis Farbman, Randal B. Potter and Ruth B. Potter, his wife, and against certain other persons who were made parties defendant in said action. These court proceedings, which were in all respects regular, resulted, as above noted, in the sale of this property by the sheriff to the State of Ohio for the sum of \$27,031.41.

At the time of the entry of the order of the court confirming the sale of this property to the State of Ohio, the property was subject to the lien of taxes and penalties, including the taxes for the year 1929, amounting to \$809.64. The order and entry of confirmation provides that this amount shall be first paid out of the proceeds of the sale of this property.

At the time of the sale of the above described property to the State of Ohio, said property was likewise subject to the lien of the undetermined taxes for the year 1930, the lien of which attached on the day preceding the second Monday in April, 1930.

Inasmuch, however, as the sale of this property to the State of Ohio at the judicial sale made by the sheriff of said county took place before the first day of October in the year 1930, the State, as the purchaser of this property, cannot require the taxes for the year 1930 to be paid out of the proceeds of the sale of this property. *Hoglen vs. Cohan*, 30 O. S., 436; *Makley vs. Whitmore*, 61 O. S., 587, 595.

Moreover, with respect to the taxes on said property for the year 1930, it is to be observed that the lien imposed on said property by the provisions of Section 5671, General Code, is the lien of the State itself, notwithstanding the fact that a portion of said taxes are for the use of the county and other political subdivisions therein, and notwithstanding the fact that said taxes are collected by the county as an agency of the State. See *Wastenev vs. Schott*, 58 O. S., 410, 415. In this situation it results that when the full fee simple title to this property is acquired by the State of Ohio upon the delivery and acceptance of the deed of the sheriff of said county conveying this property to the State of Ohio the lien of the State on this property for the taxes for the year 1930 will become merged and lost in the larger title by which the State will own and hold the same. *Reid vs. State*, 74 Ind. 252; *Smith vs. Santa Monica*, 162 Calif. 221; *Foster vs. City of Duluth*, 120 Minn. 484; Opinions of the Attorney General for the year 1917, Volume 2, page 1024.

I am of the opinion therefore, that when a deed for this property properly executed and acknowledged by the sheriff of Champaign County is delivered to the State of Ohio pursuant to the order of court confirming said sale the State of Ohio will thereby obtain a good and indefeasible fee simple title to the above described property, free and clear of all encumbrances whatsoever. However, upon payment of the purchase price of this property and the receipt of said deed from the sheriff a further order of court should be made in the proper and usual form directing a cancellation of the mortgage set up in said foreclosure proceedings and directing that a copy of said order be lodged with the Recorder of said county for record, so that the cancellation of said mortgage on the mortgage records of said county may affirmatively appear.

Upon examination of a copy of the deed which has been executed and acknowledged by the sheriff of Champaign County under date of July 22, 1930, I find that said deed has been properly executed and acknowledged and that as to form and substance said deed is correct, with one exception which is here noted, as follows: The distance mentioned in the last course in the description of the property as contained in said deed should be 5533.0 feet instead of 5333.0 feet. The executed deed

now in the hands of the sheriff should be corrected accordingly, before the transaction for the purchase of this property is closed.

Encumbrance estimate or record No. 1124 which has been submitted to me has been properly executed and approved and the same shows that there is a sufficient amount of money in the proper appropriation account to pay the purchase price of this property which is as above noted, the sum of \$27,031.41.

It is likewise noted, from the certificate of the Board of Control, that the purchase of the above described property was approved by said board under date of July 7, 1930.

I am herewith returning to you said abstract of title, copy of deed which has been executed and acknowledged by the sheriff of Champaign County and which is now held by him, encumbrance estimate No. 1124, and Controlling Board's certificate.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2255.

APPROVAL, LEASE TO STATE RESERVOIR LAND AT LAKE ST. MARYS
—H. O. WAGGENER.

COLUMBUS, OHIO, August 22, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication over the signature of the Chief of the Bureau of Inland Lakes and Parks in the Division of Conservation, submitting for my examination and approval a certain reservoir land lease in triplicate executed by the State of Ohio through the conservation commissioner by which there is leased and demised to one H. O. Waggoner of Greenville, Ohio, for a term of fifteen years, a certain parcel of state reservoir land at Lake St. Marys, which lease grants to said lessee permission to occupy and use for cottage site and docklanding purposes only, that portion of the inner slope and water front and all the outer slope of the westerly embankment of Lake St. Marys, and the State land in the rear thereof, extending back to the State ditch that is included in the south-half of embankment lot No. 68, lying south of the center line of Section 12, town 6 south, range 2 east, as laid out by H. E. Whitlock under the direction of the Superintendent of Public Works in June, 1920; said half lot having a frontage of fifty feet, as measured along the top of the outer slope of said embankment, the state reserving therefrom the right to locate a driveway along the easterly side of the State ditch.

This lease, which is executed by the conservation commissioner under the authority granted to him under Section 471, General Code, as amended in the enactment of the conservation act by the 88th General Assembly, provides for the payment of an annual rental of eighteen dollars payable in semi-annual installments of nine dollars each.

Upon examination of said lease I find that the same is properly executed and that the provisions thereof are in conformity with said Section 471 of the General Code and with other statutory provisions relating to leases of this kind.

Said lease is accordingly hereby approved by me as to legality and form, which