

2023.

APPROVAL, WARRANTY DEED TO PROPERTY IN CUYAHOGA COUNTY, OHIO.

COLUMBUS, OHIO, December 15, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration, warranty deeds from Wm. D. Fuller et ux, Marcus Terrell, H. D. Stetson et ux, John Harrison et ux, J. L. Stetson et ux, J. D. Sears et ux, Levi Thompson et ux, and a statement of title concerning the property described in Guardian's Deed conveying the interest of the heirs of Henry Thomas and such deed, also deeds from M. A. Jones, R. R. Salisbury et ux and Elinor Salisbury, quit claim deed from Elinor Salisbury and warranty deed from R. R. Salisbury et ux, which deeds are recorded respectively, in Vol. 74, pages 176, 172, 174, 178, 175, 173 and 177 of Lorain County Deed Records, Vol. 608, page 10; Vol. 608, page 11; Vol. 616, page, 448; Vol. 674, page 239; Vol. 608, page 12; Vol. 608, page 13, of Cuyahoga County Deed Records.

Inasmuch as you have not submitted to me the evidences of title of the grantors in such deeds, I am assuming for the purposes hereof, that such grantors had a good and indefeasible estate in fee simple to the property described in such deeds, free from any defects or encumbrances, and render no opinion concerning the same.

From an examination of such deeds and other papers so submitted, bearing in mind the assumption contained in the preceding paragraph, it would appear that such deeds conveyed the fee title to the premises therein described, to the Cleveland & Elyria Electric R. R. Co., and that such railroad company obtained the fee title thereto subject to the defects hereinafter set forth.

1. In the deed from Wm. D. Fuller, there is contained an agreement on the part of the railroad company to build and maintain a fence along the premises therein conveyed and to build and maintain a grade crossing.

2. In the statement of title concerning the estate of Henry Thomas, it is disclosed that Henry Thomas left surviving him a wife and certain minor children. In order to convey the title of Henry Thomas, it would have been necessary to have had a deed from his relict and also a deed from the minors. There is enclosed a deed which recites that it was issued pursuant to the order of the probate court, which purports to convey the interest of three of the minors. I am therefore of the opinion that the interest of the widow of Henry Thomas, by name, Eliza E. Thomas, if alive, should be obtained, for such widow would have a vested right of dower in the premises. There should be a deed from the other child, Lizzie, and her husband, if any. There should also be submitted to you an abstract of the proceedings in the Probate Court which authorized the guardian to execute this deed.

3. In the deed from M. A. Jones, his wife, if any, does not join. A deed from such wife or satisfactory evidence that she did not exist, should be submitted to you.

4. In the deed from R. R. Salisbury et ux., and Elinor Salisbury (674-239) there is a covenant concerning the maintenance of a ditch for drainage purposes and the maintenance of crossings. The husband of Elinore Salisbury, if any, does not join in this conveyance. You should therefore require satisfactory evidence

that she, at the time of this conveyance, was a single person or a deed conveying the interest of the husband.

5. In the deed from Elinore Salisbury (608-12) the same defect with reference to husband, appears.

From a note on the face of the deeds submitted, it would appear that by deed from the special master appointed in the foreclosure sale, the right of the Cleveland & Elyria Electric R. R. Co., was foreclosed and a master's fee was issued to the Cleveland & Elyria Electric R. R. Co. In order to make such transfer it would have been necessary that a deed be executed and delivered. You should therefore require evidence concerning the nature of this deed and the extent of the property conveyed. If such deed conveys all of the interest of the Cleveland & Elyria Electric R. R. Co., and the defects hereinbefore referred to have been cured, it is my opinion that such company or its successors could convey to the state of Ohio a perpetual easement for highway purposes, over such property.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2024.

APPROVAL, THREE LEASES TO LAND IN FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, December 18, 1933.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval three certain leases in duplicate by which the respective lessors therein named, lease and demise to the State of Ohio, for terms of five years each, certain tracts of land for state game refuge purposes.

These leases listed with respect to numbers, the names of the grantors and the location of the lands covered by these respective leases are:

No.	Names	Location of Property
2202	Ellen Tschopp	Pleasant Twp., Fairfield County, Ohio.
2203	D. V. Bauer	Pleasant Twp., Fairfield County, Ohio.
2204	Sarah Jane Watson	Pleasant Twp., Fairfield County, Ohio.

Upon examination of these leases, I find that the same have been properly executed and acknowledged by the respective lessors above named. And upon examination of the terms and provisions of said leases and of the conditions and restrictions therein contained, I find the same to be in conformity with the provisions of Section 1435-1, General Code, and with other statutory provisions which relate to leases of this kind.

I am accordingly approving as to legality and form the leases above referred to as is evidenced by my approval endorsed upon the leases and the duplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.