

5725.

APPROVAL—CONDITIONALLY, ABSTRACT OF TITLE, ETC.,
TO LAND IN COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 17, 1936.

HON. JOHN JASTER, JR., *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of a communication from your department under date of June 16, 1936, with which there is enclosed for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 1525 and Controlling Board certificate, relating to the proposed purchase by the State of Ohio for the use of your department of a tract of land now owned of record by one Martin A. Stelzer. This tract of land is located in the city of Columbus, Franklin County, Ohio, is a part of Quarter Section No. 4, Township No. 1, Range No. 17, U. S. Military Lands, and is bounded and described as follows:

Beginning at an iron stake in the west line of Joseph Bauman's land and in the center of Fifth Avenue; thence north 87 deg. West along the center of said Avenue, 4.52 chains to an iron stake in the southeast corner of Julia E. Stelzer's 3.66 acre tract of land; thence north 4 deg. E. along the east line of said Julia E. Stelzer's land, 8.55 chains to a stone, corner of said Bauman's land; thence south 85.25 deg. E. along a south line of said Bauman's land, 4.63 chains to an iron stake, corner of said Bauman's land; thence south 5 deg. W. along the west line of said Bauman's land 8.44 chains to the place of beginning, containing 3.88 acres of land.

EXCEPTING from the above described 3.88 acre tract of land, a strip 30 feet in width off of the south end thereof containing .203 acres, conveyed by Martin Stelzer to the City of Columbus, Ohio, for street purposes, by deed recorded in D. B. 1009 p. 369 Recorder's Office, Franklin County, Ohio.

Upon examination of the abstract of title of the above described tract of land, which abstract is certified by the abstracters under date of June 8, 1936, I find that Martin A. Stelzer has a good indefeasible fee simple title to this tract of land and that the same is free and clear of all encumbrances other than the taxes and assessments on the property

which are noted in the abstract. It appears in this connection that there are delinquent taxes on the property for years prior to the year 1935 amounting to the sum of \$37.82, upon which there is likewise due a penalty amounting to \$.46. The taxes on the property for the year 1935 amounted to the sum of \$10.08. No part of these taxes have been paid; and these taxes, together with the delinquent taxes above referred to, are a lien upon the property. The undetermined taxes for the year 1936 are likewise a lien upon the property.

The assessments noted in the abstract are for sewer improvements and, as stated in the abstract, are as follows:

Sewer assessments, bal. unpaid \$57.00 inc. $4\frac{1}{4}\%$ int., 3-4-5 and 1st $\frac{1}{2}$ 6th install. \$19.88 and \$1.70 pen. due Dec. 1935.

For the construction of sewer. Total balance \$19.35, inc. interest at 5%, 1-2 and 1st $\frac{1}{2}$ 3rd install. \$4.85 and 39c pen. due Dec. 1935.

For the construction of sewer. Total balance \$231.49, inc. interest at 6%, 1-2-3 and 1st $\frac{1}{2}$ 4th install. \$67.55 and \$5.79 pen. due Dec. 1935.

From the statement of these assessments in the abstract, it is a matter of some difficulty to determine with certainty the total amount of unpaid assessments which are a lien upon the property, or, stated in another way, the total amount of money that will have to be paid in order to clear this property from the lien of these assessments.

In this connection, I am advised that the taxes on the property, as distinguished from the assessments above noted, are to be paid by or for the grantors out of the purchase price of the property, which purchase price is the sum of \$670.00; and that the state, as the purchaser of this property, is to pay the assessments on the property aside from and in addition to the payment of the purchase price of the property in the amount above stated. As to this, it is noted that in the Controlling Board certificate it is stated that said Board released the sum of \$670.00 for the purchase of this tract of land and an additional sum of \$202.10 to cover payment of the special assessments against the land.

In the situation above noted with respect to the taxes and assessments on this property, it is suggested that before any vouchers are issued covering the purchase price of this property and the assessments above noted, a statement be secured from the County Treasurer with respect to the taxes upon the property that are now due and payable, in which statement should be included an estimate of the 1936 taxes. In this or a separate statement the Treasurer should set out the total amount of the assessments, penalties and interest thereon so that you

may know the exact amount of money that will be necessary in order to clear this property of the lien of the assessments above noted. After such statements have been secured from the County Treasurer a voucher should be issued to Martin A. Stelzer for the full amount of the purchase price of the property, to wit, the sum of \$670.00. When this voucher is forwarded to the Auditor of State he should issue two warrants covering the purchase price of the property, one for the amount of the taxes which are now a lien upon the property and one in the amount of the grantor's interest in the property after the payment of such taxes. Both of these warrants should be issued to Stelzer. However, the warrant covering the taxes on the property should be endorsed over by him to the County Treasurer. In addition to the procedure above outlined for the payment of the purchase price of the property, a separate voucher and warrant payable to the County Treasurer should be issued for the total amount of the assessments, penalties and interest thereon which are now a lien upon the property. From the statement of these assessments as the same are set out in the abstract, it is doubtful whether the sum of \$202.10 allowed by the Controlling Board for the payment of the same will be sufficient for this purpose. If it is not it will be necessary for you to obtain the allowance by said Board of an additional sum of money for this purpose.

Upon examination of the warranty deed which has been tendered by Martin A. Stelzer, the grantor, I find that the same has been properly executed and acknowledged by him and by his wife, Mabel N. Stelzer. The form of this deed is such that the same is legally sufficient to convey this property to the State of Ohio by full fee simple title, free and clear of the inchoate right of dower of said Mabel N. Stelzer in this property and free and clear of all encumbrances "excepting taxes and special assessments due and payable in June, 1936, and thereafter." The exception here noted in the warranty clause of this deed raises some question as to the understanding had by and between your department and Martin A. Stelzer with respect to the amount of the taxes that are to be paid out of the purchase price of this property. If effect is to be given to this exception, Mr. Stelzer would not be required to pay the taxes for the last half of the year 1935 or the undetermined taxes for the year 1936. However, all of this is a matter for adjustment by and between your department and the grantor in closing the deal for the purchase of this property.

Contract encumbrance record No. 1525, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and the same shows that there is a sufficient unencumbered balance in the appropriation account to the credit of your department sufficient to pay the purchase price of this property which, as

above stated, is the sum of \$670.00. Likewise, as before stated, the purchase of this property has been approved by the Controlling Board, which Board has released from the appropriation account the money necessary to pay the purchase price of the property.

Subject only to the exceptions above noted, the title of Martin A. Stelzer to this property is approved as are likewise the warranty deed, contract encumbrance record and Controlling Board certificate, above referred to.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5726.

SALES TAX—HOSPITAL MEALS SUBJECT TO SUCH TAX—
MEALS SERVED TO STUDENTS TAXABLE—SALES BY
CHARITABLE ORGANIZATION TAXABLE WHEN.

SYLLABUS:

The furnishing of food as meals by hospitals to patients therein for a price or consideration therefor paid or to be paid by or on behalf of such patients, are taxable sales within the Sales Tax Law of this state, and this is so whether separate and segregated charges are made for such meals as the same are served or whether the charges therefor are included in the total of the several bills for the services rendered by the hospital to the patients. This does not apply to food furnished to sisters, deaconesses and to others serving as nurses in the hospital, where no charges therefor are made or paid.

Meals served to students, visitors and others in dormitories and dining halls of universities and colleges are taxable sales where the same are served for a price paid or to be paid, and with respect to meals served to students, it is immaterial whether separate charges are made therefor or the same are included in a charge for room and board. Meals served to student waiters or waitresses employed in the dining halls of universities and colleges do not constitute taxable sales where no charge of a price paid or to be paid is made therefor.

The furnishing of laboratory equipment to students in educational institutions and of materials consumed or used in connection therewith, do not ordinarily constitute a sale of such equipment or of such materials within the meaning of the Sales Tax Law of this state.

Sales of food and of other articles of tangible personal property by ladies' aid societies and by other similar organizations affiliated with churches and church work are usually casual and sufficiently isolated as to