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APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, AND CONTRACT ENCUMBRANCE RECORD RELATING TO THE PROPOSED PURCHASE BY THE STATE OF OHIO OF TRACTS OF LAND LOCATED IN UNION AND NILE TOWNSHIPS, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, August 3, 1937.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 51 and other files relating to the proposed purchase by the State of Ohio of two tracts of land situated in part in Union Township and in part in Nile Township, Scioto County, Ohio, and which are more particularly described as follows:

*First Tract.*

O.S.U. Lot No. 16.

Beginning at a marked stone, the North East Corner of Lot No. 17 and in the line of Survey 15757; thence S 1-42½ W, 4607.46 ft. to the S.E. Corner of Lot No. 17; thence S 88-10 E, 4553.11 feet to a stone in the line of Survey 15830 and North East corner of Lot No. 20, thence N 18-10½ W, 5399.32 feet to a stone, the corner of Survey 15830 and in the line of 15757; thence with the line of 15757, S 82-06 W, 2755.78 feet to the beginning, containing 408.85 Acres.

*Second Tract.*

O.S.U. Lot No. 17 and adjoining the 1st Tract on the North part of the West line.

Beginning at a marked stone, the North East Corner of Lot No. 17 and in the line of Survey No. 15757; thence S 82-05 W, 1588.58 feet to a stake; thence S 88-10 E, 1566.22 feet to a stake in the West Line of Lot No. 16; thence with the West line of Lot No. 16, N 1-42½ E, 2442.93 feet to the beginning, containing 83.00 Acres.

This property is owned of record by one Mayme D. Pealer of Columbus, Ohio. And upon examination of the abstract of title submitted to me, I find that Mayme D. Pealer has a good merchantable

title to the above described property, subject only to the exceptions hereinafter noted. As to this, it appears that 111.30 acres of the first tract above described are in Nile Township in said county. On this acreage in Nile Township there are delinquent taxes in the sum of \$34.67, while the unpaid taxes for the year 1936 amount to \$4.29, making a total of \$38.96 of unpaid taxes on this acreage. In addition to this, the undetermined taxes for the year 1937 are likewise a lien on this property.

The balance of the acreage in the first tract above described, which stands on the Auditor's books as 305.70 acres, as well as the second tract above described, consisting of 83 acres, is in Union Township in said county. Upon this property in Union Township there are delinquent taxes in the amount of \$195.07; in addition to this, there are unpaid taxes for the year 1936 amounting to \$23.19. The undetermined taxes for the year 1937 are, of course, likewise a lien upon this property. In other words, aside from the undetermined taxes on all of the above described property, the delinquent taxes and the unpaid taxes for the year 1936 amount to \$218.26, which are a lien upon the property. Provision should, of course, be made for the payment of these taxes at the time the transaction is closed for the purchase of this property. In this connection, I am advised that Mr. W. S. Pealer, the husband of Mayme D. Pearler, is to pay these taxes on the close of the transaction for the purchase of this property by the issuance of the voucher covering the purchase price of the same.

In addition to the exception above noted as to the lien of the current and delinquent taxes on the above described property, a further objection, here noted as an exception, appears in connection with the title of Mayme D. Pealer to the 83-acre tract of land above described. As to this, it is noted that on January 31, 1917, and for about two years prior thereto one C. M. Good owned a 116-acre tract of land in the north end of O.S.U. Lot No. 17, which included the 83-acre tract of land here in question. On the date above indicated, to wit, January 31, 1917, C. M. Good and Emma J. Good, his wife, conveyed this 116-acre tract of land to one James A. Dougherty and on or about the same time said James A. Dougherty and wife, Delilah N. Dougherty, executed a mortgage on this 83-acre tract of land to C. M. Good. This mortgage, which was in the sum of \$500.00, was executed for the purpose of securing the payment of five promissory notes under date of February 1, 1917, each calling for \$100.00 and payable respectively in one, two, three, four and five years from the date thereof. This mortgage has not been released of record and the same stands as an apparent lien upon the 83-acre tract of land here in question.

In this connection, it is noted in an action filed in the Common Pleas Court of Scioto County, Ohio, under date of March 14, 1930, by

one Theodore Meyer against Albert H. Ringelspaugh, et al., to foreclose a claimed \$12,000.00 mortgage on all of the land now owned of record by Mayme D. Pealer, said C. M. Good was made a party defendant in this case and was served by publication. One of the parties defendant named in this action was Josephine E. Perdue who was at this time the owner of record of the property involved in the litigation. A decree was entered by the court in this case which denied to the plaintiff, Theodore Meyer, the relief which he sought and which quitted the title of Josephine E. Perdue in and to this property against said plaintiff and against each and all of the parties defendant, including said C. M. Good. Although the abstract of title does not so state, I assume that Josephine E. Purdue filed an answer and cross petition in this connection in which she sought affirmative relief, but whether such relief was sought only against the plaintiff, Theodore Meyer, or against C. M. Good and the other parties defendant as well, I do not, of course, know from anything that is stated in the abstract. In any event, it does not appear that any summons was issued to C. M. Good on this cross petition so as to place in litigation the question of the validity and lien of the mortgage held by C. M. Good on the 83-acre tract of land. It would seem that before the rights of C. M. Good with respect to his mortgage could be litigated in this case as between him and Josephine E. Perdue, a summons should be issued on said cross petition and served on said C. M. Good; or service should have been made on this cross petition by publication notifying said C. M. Good of the relief sought in said cross petition as against his mortgage. This not having been done, it would likewise seem to follow that the court was without power and jurisdiction to quiet the title of Josephine E. Perdue in and to this property as against the apparent lien of C. M. Good's mortgage. See *Southward vs. Jamison*, 66 O.S., 290. I am advised by Mr. W. S. Pealer that he has definite information that this mortgage, which was executed by James A. Dougherty and wife to C. M. Good, has in fact been paid. And he has agreed to furnish satisfactory evidence of this fact before the transaction is closed for the purchase of this property. Inasmuch as I find no other objections to the title of Mayme D. Pealer in and to the above described tracts of land and since, as hereinafter noted, the warranty deed and contract encumbrance record are found to be in proper form, it is suggested that upon receipt of this opinion a voucher for the full amount of the purchase price of the property be issued by your department payable to Mayme D. Pealer, the owner of the property, but that before or at the time of the issuance of the warrant of the Auditor of State on the voucher so issued the provision be made for the payment by Mayme D. Pearler of the taxes on this property in the amount above stated. It is further suggested that unless satisfactory proof is furnished

to this office of the fact that this C. M. Good mortgage is paid, before the voucher is issued by your department and presented to the Auditor of State for his warrant, the amount apparently due on this mortgage be withheld by the Auditor of State and that a warrant be issued to Mayme D. Pealer at this time for only the balance thus remaining of the purchase price of the property. Later, when evidence is produced that this mortgage has been paid, a warrant may be issue to Mayme D. Pearler for the amount of money thus withheld.

Upon examination of the warranty deed tendered by Mayme D. Pealer, I find that the same has been properly executed and acknowledged by her and by W. S. Pealer, her husband, and that the form of this deed is such that the same is legally sufficient to convey the above described property to the state of Ohio by fee simple title with a covenant that this property is free and clear of all encumbrances whatsoever.

Upon examination of contract encumbrance record No. 51, 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 to be a sufficient amount of money, otherwise unencumbered, in the rotary fund in the hands of the Treasurer of State to the credit of the Division of Forestry of your department to pay the purchase price of this property, which purchase price is the sum of \$3074.06. Inasmuch as this money is to be paid out of the rotary fund above referred to under the authority of House Bill No. 571, 116 O.L., Part II, page 68, no action of the Controlling Board with respect to the purchase of this property was or is necessary.

Subject to the exceptions and the suggestions pertinent thereto, above noted, the title of Mayme D. Pealer in and to the above described tract of land is hereby approved as are the warranty deed, contract encumbrance record and other files submitted in connection with the purchase of this property. All of these files, including the abstract of title, are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*