

evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5788.

APPROVAL—GUARANTEED CERTIFICATE OF TITLE TO
LAND IN GREEN TOWNSHIP, SUMMIT COUNTY, OHIO—
GUARANTEE TITLE COMPANY.

COLUMBUS, OHIO, July 2, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a guaranteed certificate of title, executed by The Northern Ohio Guarantee Title Company under date of March 25, 1936, a warranty deed and contract encumbrance record No. 3, all relating to the proposed purchase by the state of Ohio for the use of your department in the construction of the Nimisila Creek Basin Reservoir, of a parcel of land in Green Township, Summit County, Ohio, which is owned of record by one Kelly Myers.

This parcel of land is a part of the southeast quarter of Section Number Thirty (30) in said township, and is described by metes and bounds in the deed conveying this property to the state of Ohio, as follows:

Beginning at a stone set in the center line of Christman Road and on the southeast corner of Section No. 30; thence N. 82° 55' 10" W. along the south line of the property of Steve Andrus, twelve hundred forty-two and twelve hundredths (1242.12) feet to a stake and the true place of beginning of the description of the property to be conveyed; thence N. 84° 00' 40" W. along the Grantor's south line, eight hundred forty and sixty-one hundredths (840.61) feet to a stone set at the southeast corner of land, now or formerly owned by Nelson Pippus; thence N. 7° 11' 50" E. thirty and no hundredths (30.00) feet to a stake; thence S. 84° 00' 40" E. eight hundred forty and thirty-eight hundredths (840.38) feet to a stake set in the west line of the property of Steve Andrus; thence S. 6° 45' 30" W. thirty and no hundredths (30.00) feet to the true place of be-

ginning and containing fifty-eight hundredths (0.58) acres of land as surveyed May 21, 1936 by Francis Stafford.

The above described parcel of land is a strip of land thirty feet in width off of the south side of a 12.70-acre tract of land owned of record by Kelly Myers. Upon examination of the certificate of title submitted to me, I find that as of the date thereof, to wit, March 25, 1936, Kelly Myers had a good and indefeasible fee simple title to the above described parcel of land and to the larger tract of 12.70 acres of land of which the parcel above described is a part, and that he owned and held this larger tract of land including the above described parcel free and clear of all encumbrances other than those hereinafter mentioned which are here noted as exceptions to the title in and by which Kelly Myers owns and holds this property.

1. On August 16, 1902, Elias Myers, the predecessor in title of Kelly Myers in the ownership of the property here in question and of the 12.70-acre tract of land of which the same is a part, executed an easement deed to The East Ohio Gas Company by which, in consideration of the sum of \$66.00, he granted to the gas company a right of way in and upon said larger tract of land for the purpose of laying, maintaining and operating thereon pipe lines for the transportation of gas and also granted to said company the right to maintain and operate a telegraph line, if the same should be found to be necessary, over and through this tract of land. I am not advised by this certificate of title or otherwise as to whether The East Ohio Gas Company ever laid down any pipe lines for the transportation of gas in and upon this tract of land or whether it ever constructed the telegraph line authorized by the deed above referred to. If either or both of these things have been done, the lines thus laid down and constructed in and upon this property are an encumbrance by way of easement upon the property.

2. On September 10, 1907, said Elias Myers, acting by Kelly Myers as his agent, executed to The East Ohio Gas Company another easement deed in and by which the gas company was given the right to lay, maintain and operate a pipe line for the transportation of gas in, over and through the parcel of land here in question and the larger tract of land of which the same is a part. The pipe line provided for in this deed is likewise an encumbrance upon the property here in question; although, as in the case of the first easement deed, nothing is shown in the certificate of title as to whether the pipe line provided for in the deed was ever laid down by the gas company.

3. It appears from the certificate of title that on July 18, 1930, the Central Depositors Bank and Trust Company obtained a judgment by the consideration of the Common Pleas Court of Summit County in Case

No. 83097 on the docket of said court, against the firm of Barico and Myers (K. M. Myers and Frank Barico). It appears that on July 5, 1935, an execution was issued on the above judgment and returned unsatisfied. Assuming, as I do, that the K. M. Myers above referred to is Kelly Myers the owner of this property, it is apparent that this judgment, together with interest thereon (from March 8, 1930), and the costs in the case are a lien upon the above described property and upon other real property owned by Kelly Myers in Summit County. Before the transaction for the purchase of the above described property and of other property of Kelly Myers is closed by the issue of vouchers and warrants therefor, some arrangements should be made for the satisfaction and discharge of this judgment.

4. On February 9, 1932, Kelly Myers and Lena Myers, his wife, executed an oil and gas lease to The East Ohio Gas Company, which lease is recorded in Lease Record No. 1407, page 311, in the office of the Recorder of Summit County, Ohio. By this lease, there was granted and demised to The East Ohio Gas Company the right to drill for oil and gas and constituents thereof in and upon the 12.70-acre tract of land, above referred to, with the additional right in the gas company to build such tanks, stations and other structures thereon as might be necessary to produce, care for and transport the oil and gas products taken from these lands. This lease was for a stated term of five years and for so much longer as oil or gas or their constituents is or are found in and on said premises in paying quantities. I am not advised by the certificate of title or otherwise whether The East Ohio Gas Company, acting under the authority of this lease, has commenced operations for the development of oil and gas on the premises or whether it has constructed any pipe lines, tanks or other structures upon the land for purposes of such development. In any view, this lease is an encumbrance upon the land.

In this connection, it is to be observed that the question as to how far, if at all, the encumbrance of this outstanding lease held by The East Ohio Gas Company and the encumbrances above noted as to the pipe line easements granted to said company by Elias Myers will affect the use which is to be made of the parcel of land above described, is a question to be determined primarily by you and by the engineers in charge of the construction of the Nimisila Creek Basin Reservoir improvement. As to this, it is to be further observed that inasmuch as the .58-acre parcel of land above described is only a small part of the 12.70-acre tract of land which is affected by the oil and gas lease as an encumbrance and by the right of way easements for pipe line purposes above referred to, it is possible that the pipe lines as laid and the oil and gas development, if any, do not materially affect the surface of this particular parcel of land and that a release of these encumbrances may be easily secured with respect to this parcel.

5. The taxes for the year 1935 on the 12.70-acre tract of land of which the parcel above described is a part, are unpaid and are a lien upon the whole of such larger tract including, of course, the parcel of land here under consideration. The amount of these taxes is not stated in the certificate of title submitted to me; nor is there stated therein the amount of the taxes on this property for the year 1936 which, I assume, are yet undetermined as to amount. It does not appear that there has been any segregation of the taxes for either the year 1935 or the year 1936 upon the .58-acre tract of land here under consideration. Before this land is purchased and vouchers and warrants issued therefor, some arrangement should be made for the segregation of the taxes upon the parcel of land here in question and for the payment and satisfaction of the same.

Upon examination of the warranty deed tendered by Kelly Myers, conveying this property to the state of Ohio, I find that the same has been properly executed and acknowledged by him and by Lena Myers, his wife. I further find that 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 dower interest of Lena Myers, the wife of said Kelly Myers, with a covenant that the property therein described is free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 3, 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 a sufficient balance in the appropriation account to the credit of your department for the purchase of lands in connection with the Nimisila Creek Basin Reservoir improvement, to pay the purchase price of the parcel of land above described, which purchase price is the sum of \$100.00. It likewise appears from said contract encumbrance record that the purchase of this land has been approved by the Controlling Board and that the money necessary to pay the purchase price of the property has been released by said Board for this purpose.

Subject only to the exceptions above noted with respect to the title of Kelly Myers in and to the above described parcel of land, his title to this property is hereby approved, as is also the warranty deed and contract encumbrance record above referred to.

I am herewith returning to you the certificate of title and warranty deed submitted to me in connection with the proposed purchase of this property.

Respectfully,

JOHN W. BRICKER,
Attorney General.