

4760.

DISCUSSION OF AFFIDAVITS IN CONNECTION WITH DEED  
MENTIONED IN OPINION NO. 2975, RELATING TO LAND  
FOR HIGHWAY PURPOSES.

COLUMBUS, OHIO, October 5, 1935.

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

DEAR SIR:—Under date of September 20, 1935, you submitted two affidavits, one of which is signed by Minor Swick and the other being signed by Orland Brown. You further refer to my Opinion No. 2975 and particularly to my comment therein in reference to deeds numbered 59, 64, 89 and 47 submitted by you. You state that the affidavits are submitted for consideration as to their sufficiency in clearing the defects as mentioned in connection with the deeds above referred to.

From a verbal conversation with Mr. Sheldon of your department, it appears that said affidavits do not purport to cover any matters relating to deeds numbered 89 and 47, above mentioned.

The affidavits enclosed, if the statements therein are correct, are in proper form to establish title by adverse possession to the property therein described. Whether or not the descriptions in said affidavits cover the same premises or portions thereof as are set forth in the deeds referred to, is a matter that can best be determined by a surveyor or engineer. A casual examination of said descriptions does not disclose that they are the same. However, a more technical examination in connection with other data and facilities at your command may disclose that the descriptions in the affidavits describe premises included in the deeds.

In reference to the comment in said opinion relative to deed No. 89, it may be stated that if the traction company occupied said premises without objection on the part of the lessee mentioned, it is probable that the use of the land for highway purposes would be no more detrimental to the interests under the lease than such use for traction purposes. The contention has been sustained in at least one common pleas court that highway purposes are not inconsistent with grants made for traction line purposes. It is suggested that you have your representative examine the lease referred to, if possible, and you may be able to determine from the provisions thereof and the facts involved, to what extent, if any, said lease will interfere with the highway uses. If there are no apparent obstacles, it is believed that this matter would not be of a serious nature.

As to the comment made in said opinion with reference to deed No. 47, wherein there was no acknowledgment or witnesses, if, as a matter of fact, the grantees and their successors in title have been in continuous, open and no-

torious possession of the premises for more than twenty-one years and held the premises adverse to all other claimants, of course, that would constitute good title. This, of course, if true, could be established by proper affidavits. Furthermore, if said deed is of record, a certified copy of the same could be used in evidence in a proceeding to have the deed corrected. In view of the above, it is suggested that this objection would seem to be of minor consequence.

In conclusion, it may be pointed out that this opinion, as well as Opinion No. 2975, treats only with the specific deeds submitted and no expression can be made with reference to the claim of title prior to and subsequent to said deeds.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4761.

APPROVAL, CONTRACT FOR GENERAL WORK FOR BUILDING AND TUNNEL, ETC., AT INSTITUTION FOR THE FEEBLE-MINDED, AT APPLE CREEK, OHIO, \$83,446.00, SEABOARD SURETY COMPANY OF NEW YORK, SURETY-GIBBONS-GRABLE COMPANY OF CANTON, OHIO.

COLUMBUS, OHIO, October 7, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, a contract between the State of Ohio acting by the Department of Public Works for the Department of Public Welfare, and The Gibbons-Grable Company of Canton, Ohio. This contract covers the construction and completion of Contract for General Work for the Building and Tunnel, and including electric hydraulic plunger lift for a project known as Kitchen, Dining-room, Cold storage, and Bakery—Institution for the Feeble-Minded, at Apple Creek, Ohio, in accordance with Item No. 1, of the form of proposal dated September 9, 1935. Said contract calls for an expenditure of Eighty-three thousand, Four hundred and Forty-six dollars (\$83,446.00).

You have submitted the certificate of the Director of Finance, to the effect that there are unencumbered balances legally appropriated, in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board, showing that said Board has released funds for this project in accordance with Section 1 of House Bill No. 69, of the second special session of the 90th General Assembly.