

1220.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN HAMILTON COUNTY.

COLUMBUS, OHIO, November 22, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1221.

APPROVAL, BONDS OF VILLAGE OF UPPER ARLINGTON, FRANKLIN COUNTY—\$35,100.00.

COLUMBUS, OHIO, November 22, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

1222.

APPROVAL, TRANSCRIPT OF PROCEEDINGS FOR SALE OF LAND IN HAMILTON, BUTLER COUNTY—THE PAULINE M. SCHWARTZ COMPANY.

COLUMBUS, OHIO, November 23, 1929.

HON. R. T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a transcript of your proceedings and findings relating to the proposed sale and conveyance of the interest of the State of Ohio in and to a certain twenty foot driveway in the City of Hamilton, Ohio, which extends easterly from the east line of Third Street in said city to the west line of Smith Street, said driveway being a parcel of land twenty feet in width by sixty-five feet in length; said proposed sale and conveyance being under the authority of an act of the Eighty-eighth General Assembly, passed April 3, 1929 (113 O. L., 523).

It appears from the findings made by you relating to the proposed sale of this parcel of land that the the same was conveyed to the State of Ohio by one Silas Smith by deed dated April 13, 1831, and that said property was conveyed for street and public highway purposes "for the use of the citizens of Hamilton and others and for no other uses, intent or purposes whatsoever forever." There is nothing in the finding of facts made by you in this connection to show that this property

was ever accepted by the state for the uses and purposes mentioned in said deed other than as such acceptance may have been implied from certain minor improvements for street purposes made thereon during years immediately succeeding the time when this deed was executed and recorded. The purpose of the grantor in executing this deed to the State of Ohio for the purpose therein mentioned was apparently to make other property owned by him more accessible to the Hamilton basin or lateral canal which had been constructed so as to connect up with the main line of the Miami and Erie canal. The above described parcel of ground was used for public street purposes until some time within the last few years, when the street or driveway was formally vacated by action of the council of the City of Hamilton. After this was done the state, through the Department of Public Works, asserted a claim to this property and it was apprehended by all parties concerned that the interest of the State of Ohio in this property could not be disposed of or extinguished without legislative authority. Accordingly the Legislature passed the act above referred to and thereby authorized the Superintendent of Public Works of the state to appraise and sell, subject to the approval of the Governor and Attorney General, all the right, title and interest of the State of Ohio in said parcel of ground. This act further provides that the Superintendent of Public Works shall appraise whatever interest the State of Ohio has in such property at its true value in money, and thereafter submit the same to the Governor and Attorney General with the request that they join with him in the sale of such land at such appraisement, and that upon the approval of the Governor and Attorney General, and the payment of the purchase price into the treasury of the State of Ohio, the Governor shall execute a quit claim deed to the purchaser thereof.

It appears that The Pauline M. Schwartz Company, of Hamilton, Ohio, is the owner of the property abutting on both sides of the parcel of land here in question, and the proposal submitted by you under authority of the act of the Legislature above referred to is the sale and conveyance of the parcel of land here in question to said The Pauline M. Schwartz Company.

In considering the proposed sale and conveyance of this parcel, and the transcript of your findings relating thereto, the thought occurs that that there may be some question as to the power of the Legislature to authorize the disposition and use of this property for a purpose other than that contemplated by the donor, as indicated by the terms of his deed conveying this property to the state. However, this department does not ordinarily assume the prerogative of questioning the constitutional validity of acts of the Legislature after the same have been passed. It appears from the transcript of your proceedings that the interest of the State of Ohio in this parcel of land has been appraised at the sum of \$5,508.00, and it is proposed to sell and convey the state's interest in the property to The Pauline M. Schwartz Company in consideration of the payment by said company of said sum of \$5,508.00.

Assuming, as I must, that the act of the Legislature above referred to is in all respects valid, your action in selling the state's interest in this property for the appraised value of such interest is within the authority conferred upon you by said act. In view of this fact, and the further fact that the deed to be executed by the State of Ohio is a quit claim deed which will contain no covenants as to warranty or with respect to the title or interest of the state in and to said parcel of land, I do not see any legal objection to the sale and conveyance of this property in accordance with the terms of said act of the Legislature. Said proposed sale and conveyance is accordingly approved by me, as is evidenced by my approval endorsed on the transaction of the proceedings submitted and upon the duplicate copy thereof.

An examination of the act of the General Assembly, above referred to, shows that the deed which the Governor is authorized to execute to the purchaser of this property is a quit claim deed only. I have, therefore, taken the liberty of rewriting said deed so as to make the same conform to this requirement and, as rewritten, the same is approved.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1223.

APPROVAL, BONDS OF ASHLAND CITY SCHOOL DISTRICT, ASHLAND COUNTY—\$4,500.00.

COLUMBUS, OHIO, November 23, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

1224.

APPROVAL, NINE LEASES TO OHIO CANAL LAND IN OXFORD TOWNSHIP, COSHOCTON COUNTY.

COLUMBUS, OHIO, November 25, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval certain leases, nine in number, executed by you as Superintendent of Public Works and as Director of such department, on behalf of the State of Ohio, whereby there are leased and demised to the several lessees therein named, for terms of fifteen years each, parcels of Ohio canal lands which are particularly described in said respective leases.

The leases here in question which are in all cases for an annual rental of six per cent upon the appraised valuation of the respective parcels of land leased, are here designated with respect to the names of the several lessees, the location of the parcels of land leased and the appraised valuations thereof as follows:

| <i>Lessee</i> | <i>Location</i> | <i>Valuation</i> |
|---|-----------------|------------------|
| Quay J. Briggs, Oxford Township, Coshocton County----- | | \$100.00 |
| David Briggs, Sr., Oxford Township, Coshocton County----- | | 100.00 |
| David Briggs, Jr., Oxford Township, Coshocton County----- | | 100.00 |
| Wilmer Maloney, Oxford Township, Coshocton County----- | | 100.00 |
| Earl Robson, Oxford Township, Coshocton County----- | | 100.00 |
| Clark Swisshelm, Oxford Township, Coshocton County----- | | 200.00 |
| Ralph Simmers, Oxford Township, Coshocton County----- | | 100.00 |
| Clark Smart and John Leggett, Oxford Township, Coshocton County | | 100.00 |
| W. T. Wills, Oxford Township, Coshocton County----- | | 300.00 |