

599.

APPROVAL, BONDS OF LORAIN COUNTY—\$30,000.00.

COLUMBUS, OHIO, June 10, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

600.

APPROVAL, BONDS OF CLARIDON TOWNSHIP RURAL SCHOOL DISTRICT, MARION COUNTY—\$40,000.00.

COLUMBUS, OHIO, June 10, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

601.

APPROVAL, BONDS OF SOUTH POINT VILLAGE SCHOOL DISTRICT, LAWRENCE COUNTY—\$1,000.00.

COLUMBUS, OHIO, June 10, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

602.

SUPERINTENDENT OF OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME—NO AUTHORITY TO LEASE REAL ESTATE OF WARDS FOR OIL AND GAS PURPOSES UNTIL HE HAS OBTAINED PERMISSION FROM PROBATE COURT OF GREENE COUNTY.

SYLLABUS:

The superintendent of the Ohio Soldiers' and Sailors' Orphans' Home has no

authority to enter into a lease for oil and gas purposes on the real estate of his wards until he has obtained permission so to do from the Probate Court of Greene county.

COLUMBUS, OHIO, June 10, 1927.

COL. THOMAS E. ANDREWS, *Superintendent, The Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows:

“Enclosed please find lease between Thomas E. Andrews as guardian of S., A., and E. S., minors, to the Ohio Fuel Gas Co. I would like your advice as to the same.

I understand that the property was willed to the widow for her life time with a proviso that should she remarry that it reverted to the children at the time of marriage, otherwise it would not revert to them until the death of their mother.

I have read the lease proposed between the mother of the children and the Ohio Fuel Gas Co., and find that the amounts in the one offered the children is one-half of that to be paid the mother.

I would like your full advice in this matter, not only as to the legality of the lease and my right to sign same, but as to any point affecting the children's welfare.”

You also attach the proposed lease, which is for oil and gas purposes on land in which your wards, S. S., A. S. and E. S. have an interest.

Section 1946-3 of the General Code provides as follows:

“The superintendent of the Ohio Soldiers' and Sailors' Orphans' home shall be, by virtue of his office, the guardian of the estate of all minors under the age of sixteen years, duly admitted and residing in such home, whose fathers are deceased and who have no other legal guardians. The superintendent shall be liable on his official bond for the conduct of the guardianship and shall not be required to give additional bond. When any minor whose estate is under the guardianship of the superintendent arrives at the age of sixteen years or is discharged from the home, the superintendent shall file his final account as guardian with the probate judge of the county in which the home is situated, and no fees shall be charged by the court for the filing of such account and discharge as guardian. *The provisions of law relating to the guardians of minors shall apply as far as possible to the provisions of this section.*” (Italics the writer's)

This section was amended by the 87th General Assembly, by Amended Senate Bill No. 162, effective on and after July 26, 1927, to read as follows:

“The superintendent of the Ohio Soldiers' and Sailors' Orphans' Home shall be, by virtue of his office, the guardian of the estate of all minors * * * duly admitted * * * in * * * said home, * * * who have no other duly appointed legal * * * guardian. The superintendent shall be liable on his official bond for the conduct of the guardianship and shall not be required to give additional bond. When any minor whose estate is under the guardianship of the superintendent * * * is discharged

from the home, the superintendent shall file his final account as guardian with the probate judge of the county in which the home is situated, and no fees or compensation shall be charged by * * * said superintendent or probate judge for the filing of * * * said account and discharge * * * of guardian. * * * .”

This amendment, however, in no wise affects the instant question.

You do not state that these children are under the age of sixteen years, but since you are acting as guardian for them it is assumed that they are under such age. It is also assumed that their father is not living and that there is no other legal guardian.

You will note that the last sentence of said section provides that the provisions of law relating to the guardians of minors shall apply as far as possible to such guardianship.

Your attention is directed to Section 10983 of the General Code, which relates to the authority of a guardian to lease real estate of his ward for petroleum oil or natural gas purposes, for a period of time not exceeding ten years. This section is here applicable and reads as follows :

“A guardian of the person and estate or of the estate only, of a minor, or of a lunatic, idiot or imbecile, or an incompetent by reason of advanced age or mental or physical disability or infirmity, may lease the real estate of his ward, or of such lunatic, idiot or imbecile, or an incompetent by reason of advanced age or mental or physical disability or infirmity, for petroleum oil or natural gas purposes, or either, or for the removal of gravel, stone or other mineral substances for such period of time not exceeding ten years, as may be authorized by the probate court appointing such guardian.”

Section 10984 of the General Code provides :

“Before executing such lease, the guardian shall file his petition for authority to make it, in the probate court appointing him, which petition must contain a description of the real estate sought to be so leased, a detailed statement of the terms, time and conditions of the proposed lease, and, as near as may be, its net annual value to the ward.”

and Section 10986 General Code makes provision for notice of the hearing in the following language :

“On filing the petition, notice thereof, and its object and purport, and of the time of hearing of it in such court, shall be given the ward and all other defendants, as in proceedings therein to sell the real estate of a minor.”

Section 10987 General Code provides :

“Upon the final hearing, if satisfied from the evidence that it will be for the best interests of the ward, that the prayer of the petition be granted, the court may prescribe the terms, covenants, conditions and stipulations of the lease, either in accordance with those set forth in the petition or otherwise. Such lease, when so made by the guardian, shall be by him reported to the court and not take effect until it is approved and confirmed by the court.”

You can readily see from the provisions of the above sections that you can not execute this lease until you have obtained permission so to do from the probate court.

Section 10984, *supra*, provides that the application for authority to make the lease shall be filed by the guardian in "the probate court appointing him." This raises the question as to the proper probate court in which to make the application, for the reason that you are not guardian by virtue of appointment by any probate court but by virtue of your office as provided in Section 1946-3, *supra*. Said section, however, provides for filing a final account with "the probate judge of the county in which the home is situated."

Under the general statutes the final account must be filed "with the court appointing" the guardian, and it would seem from the language of Section 1946-3, *supra*, that it was the intention of the legislature to give the probate court of Greene county jurisdiction over the matters which an appointing court would have.

With reference to your request, that I advise you "as to any point affecting the children's welfare" in connection with this lease, in view of my conclusions as to the jurisdiction of the Probate Court of Greene county, it is apparent that whether or not the wards' interests are properly protected in this lease is not a question for me to decide but for the court to determine "upon final hearing" as provided in Section 10987, *supra*.

It is therefore my opinion that you have no authority to enter into a lease for oil and gas purposes on the real estate of said wards until you have obtained permission so to do from the Probate Court of Greene county.

Respectfully,
EDWARD C. TURNER,
Attorney General.

603.

BOARD OF EDUCATION—UNAUTHORIZED TO APPOINT ONE OF ITS OWN MEMBERS TO BOARD OF LIBRARY TRUSTEES.

SYLLABUS:

1. *A board of education which is authorized to appoint members of a board of trustees for the operation of a joint library under provisions of Sections 7633 and 7634, General Code, may not appoint members of such board of education to the board of library trustees.*

2. *Where an attempted appointment is made by a board of education of its own members to membership on a board of trustees for a school library, the fact that such appointments have been made does not operate to affect the status of the board of education making such appointments.*

COLUMBUS, OHIO, June 13, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"Will you kindly give me your opinion on the following question?

Where a library is jointly owned and maintained by two school districts under Section 7633 and three trustees are to be appointed by