

4322.

APPROVAL, CONDITIONALLY, CERTIFICATE OF TITLE, ETC., RELATING TO THE PROPOSED PURCHASE BY THE MUSKINGUM WATERSHED CONSERVANCY DISTRICT OF LAND IN HANOVER TOWNSHIP, ASHLAND COUNTY, OHIO.

COLUMBUS, OHIO, June 6, 1935.

*The Board of Directors of the Muskingum Watershed Conservancy District, New Philadelphia, Ohio.*

GENTLEMEN:—You have submitted for my examination and approval a certificate of title, certificate of items not of record, warranty deed form, owner's description, contract encumbrance record No. 60, owner's voucher, disbursement journal, surveyor's certificate and Controlling Board certificate, relating to the proposed purchase by the Muskingum Watershed Conservancy District of two tracts or parcels of land which are owned of record by The Superintendent of Banks of the State of Ohio, in Hanover Township, Ashland County, Ohio, which parcels of land are more particularly described by metes and bounds as follows:

First Parcel: A part of the east half of the northwest quarter of section six (6), township nineteen (19) north, range sixteen (16) west of the Ohio River Survey, and further described as follows:

Being all of the east half of the said northwest quarter of section six (6), excepting therefrom a tract of twenty-six (26) acres across the south end of the said east half of the northwest quarter of section 6, which heretofore has been conveyed by J. P. Darling et al to Sophiah Stoner by deed dated April 1, 1884, and recorded in volume 60, page 558, of the deed records of Ashland county. The part of the east half of the northwest quarter of section 6 herein conveyed and described, containing an area of seventy-two and seventy-five hundredths (72.75) acres, more or less.

Second Parcel: Being a part of the northwest quarter of the northeast quarter of section six (6), township nineteen (19) north, range sixteen (16) west of the Ohio River Survey, and being all of the said northwest quarter of the northeast quarter of section 6, which lies west and north of the center line of Clear Fork Creek; containing an area of three and seventy-five hundredths (3.75) acres, more or less.

The two tracts herein conveyed and described as the first and second parcels have a combined area of seventy-six and fifty hundredths (76.50) acres, more or less, and are all of the lands conveyed to Ira J. Fulton, Superintendent of Banks, by deed from H. F. Wallett, sheriff of Ashland county, as recorded in Volume 178, page 515, of the deed records of Ashland county, Ohio.

The certificate of title above referred to is over the signature of one Nettie Nulton, Title Attorney of the Conservancy District, and the same is supplemented by a report on the title to this property as the same appears in an abstract of title, which was likewise submitted to me in connection with my investigation of the title, in and by which the State Superintendent of Banks owns and holds this property. From the examination thus made by me, I find that the State Superintendent of Banks has a purported title to the above described property, subject to the lien of \$23.38 taxes for 1934,—an

assessment of \$8.86 and taxes for the year 1935; and subject, further to the following oil and gas leases,—to wit:—

Oil and Gas Lease from William Brokaw to Philip Krebs, dated April 27, 1905, recorded in L. R. 3, page 440; assigned to The Ohio Fuel Supply Company.

Oil and Gas Lease from W. O. Burkholder to Midland Oil Co., dated July 29, 1914, recorded in L. R. 18, page 147.

Oil and Gas Lease from W. O. Burkholder to Joseph Kunkel, dated February 8, 1928, recorded in L. R. 26, page 502.

Also subject to the following pipe line rights, to wit:—

W. O. Burkholder to Buckeye Pipe Line Company, recorded in Vol. 17, page 302.

W. O. Burkholder to Buckeye Pipe Line Co., Vol. 20, page 550.

W. O. Burkholder to Buckeye Pipe Line Co., Vol. 23, page 516.

Also subject to right of way of necessity, appurtenant to land lying west of the tract to be purchased.

The above lands are subject to the rights of a roadway across the said lands, from the public road in the northeast quarter of said section 6 to the lands of Clinton and Cora Stoner, as established by action in the Court of Common Pleas of Ashland county in case #17411 entitled W. O. Burkholder versus Clint. Stoner, and recorded in journal 30, page 103, of the journal of said Court under date of Nov. 22, 1921, and in Volume 69, page 147 et seq., of the record of said Court.

The possible dower of the wife of B. F. Darling in one-fourth interest only—not signed away in the deed of 1884—has not been asserted for fifty-one years,—and would not be worth much today, so that may be passed.

It appears that the State Superintendent of Banks received a sheriff's deed after foreclosing its mortgage against one W. O. Burkholder—who held title by a deed from William Brokaw in 1908 with defective description. However, W. O. Burkholder gave a mortgage correctly describing our premises. Since the sheriff's conveyance,—said William Brokaw has given said W. O. Burkholder a deed with the correct description which is as yet not recorded. It is alleged that W. O. Burkholder has threatened to make trouble. I do not believe that any court would permit W. O. Burkholder to take such advantage of his own error, but, perhaps the State Superintendent of Banks ought to get a special court order to sell this land, and an entry of confirmation which can be recorded in Ashland County as per General Code 710-95.

With the other files relating to the purchase of this property, you have submitted a deed form of a warranty deed to be executed by Superintendent of Banks of the State of Ohio, for the purpose of conveying this property to the Muskingum Watershed Conservancy District, which is a body corporate and a political subdivision of the state of Ohio. Upon examination of the deed form submitted, I find that the form of this deed is such that the same, when it is properly executed and acknowledged by said Superintendent of Banks of the State of Ohio, will be effective to convey the property here in question to the Muskingum Watershed Conservancy District by full fee simple title.

As a part of the files relating to the purchase of the above described property, you have submitted to me contract encumbrance record No. 60. This instrument, which is executed upon the regular form used by state officers and departments in encumbering funds for the purpose of meeting contractual obligations of the State for the use of such officers or departments, is authenticated by the signatures of T. J. Haley and C. W. Ullom, acting pursuant to the authority of a resolution of the Board of Directors of the Muskingum Watershed Conservancy District. Although this resolution of the Board of Directors of said Conservancy District does not, of course, give to the persons above named the status of state officers or agents, or give them any authority to contract on behalf of the state of Ohio, their signatures on this contract encumbrance rec-

ord do have the effect of authenticating the fact that the Muskingum Watershed Conservancy District has contracted for the purchase of the particular property therein described and afford a sufficient predicate to the certificate of the Director of Finance that there is a sufficient unencumbered balance to the credit of the Muskingum Watershed Conservancy District under the appropriation made to said Conservancy District in and by House Bill No. 61 enacted by the 90th General Assembly under date of April 7, 1934; all of which is contemplated by and is in accordance with the agreement entered into by and between the Controlling Board and the Board of Directors of said Conservancy District with respect to the expenditure of the moneys appropriated by said act for the uses and purposes of the Conservancy District.

In this view and for the purpose above stated, this contract encumbrance record has been properly executed and the same shows that there is a sufficient unencumbered balance in the appropriation account covered by the moneys released by the Board of Control to pay the purchase price of the real property here in question, which purchase price is the sum of \$1500.00. In this connection, it is noted that under date of December 5, 1934, the Controlling Board released from this appropriation account an additional sum of \$100,000, which is an amount sufficient to cover the purchase price of the real property here in question and of all other tracts of land which have been submitted to this office for consideration.

Subject to the exceptions above noted, the title to the above described property of the Superintendent of Banks of the State of Ohio is approved, and the certificate of title, warranty deed, contract encumbrance record No. 60 and other files relating to this purchase are herewith enclosed for further appropriate action on your part and upon the part of the Auditor of State.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

P. S. June 5, 1935. Court entry asked for on page 4 has been furnished, and will be recorded in Ashland County. This clears the title. R. P.

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4323.

APPROVAL, BONDS OF MILTON RURAL SCHOOL DISTRICT, ASHLAND COUNTY, OHIO, \$3,481.28.

COLUMBUS, OHIO, June 6, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4324.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$27,000.00.

COLUMBUS, OHIO, June 6, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*