

of Article XIX thereto. JOHN W. BRICKER, Attorney General.”

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5152.

APPROVAL—BONDS OF CANAL WINCHESTER VILLAGE  
SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO, \$9,500.00.

COLUMBUS, OHIO, February 8, 1936.

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

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5153.

APPROVAL—ABSTRACT OF TITLE, ETC., TO LAND IN  
FRANKLIN TOWNSHIP, FRANKLIN COUNTY, OHIO, FOR  
PROPOSED SITE OF ARMORY BUILDING.

COLUMBUS, OHIO, February 8, 1936.

HON. EMIL F. MARX, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR GENERAL MARX: You recently submitted for my examination and approval an abstract of title relating to three parcels of land in or adjacent to the city of Columbus which you desire to acquire as the proposed site of an armory building. The three tracts of land here referred to are situated in the county of Franklin, state of Ohio, and in the township of Franklin, are a part of fractional section 18, township 5, range 22, Refugee Lands, and are more particularly described as follows:

First Parcel: Beginning at an iron pin marking the intersection of the south line of Dublin Avenue with the west line of Sandusky Street as re-located by the Commissioners of Franklin County in 1928; thence with the west west line of Sandusky Street S. 39° 52' E. 21.55 feet to an iron pin marking a point of curvature in the said west line of Sandusky Street; thence with the said west line of Sandusky Street curved to the right with a radius of 905 feet, S. 34° 53' E. 157.33 feet on the long chord of said curve, to an iron pin on the south line of a tract of land containing 3.40 acres conveyed to the City of Columbus

by Elouise Converse by deed recorded in Deed Book 303, page 414, Franklin County Recorder's office; thence with the said south line of said 3.40 acre tract, S. 87° 30' W. 578.51 feet to an iron pin marking the northeast corner of a tract of land containing 7.34 acres conveyed to the City of Columbus by the C. and C. Haulage Company by deed recorded in Deed Book 659, page 335, Franklin County Recorder's Office; thence with the east line of said 7.34 acre tract S. 49° 55' E. 320.00 feet to an iron pin; thence on a straight line crossing said 7.34 acre tract S. 40° 05' W. 260.33 feet, more or less, to an iron pin at low water mark of the Scioto River; thence with the low water mark of the Scioto River and the meanders thereof N. 24° 15' W. 408.98 feet to a stake; thence N. 45° 14' W. 135.11 feet to a stake; thence N. 49° 06' W. 115.11 feet to an iron pin on the low water mark of the Scioto River, and the said south line of Dublin Avenue produced westwardly; thence with the said south line of Dublin Avenue produced and with the said south line of Dublin Avenue N. 87° 30' E. 748.52 feet, more or less, to the place of beginning (passing an iron pin at 101.07 feet located at the top of bank of the Scioto River), containing 3.94 acres, more or less.

Second Parcel: Beginning at a point in the south line of a 3.40 acre tract deeded to the City of Columbus by deed recorded in Deed Book 303, page 414, said point also being in the center line of Sandusky Street, as formerly established, and 883.77 feet northerly in said center line from the south face of what was originally the north abutment of the bridge over the Scioto River, said Abutment being now the north pier, the bridge having been extended to a new abutment; thence south 82° 32' west along the south line of said 3.40 acre tract a distance of 88.60 feet to a stake; thence continuing with said line south 87° 30' west, a distance of 126.93 feet to the true place of beginning; said true place of beginning is distant 100 feet, measured along the northerly line of said premises conveyed to the Grantor herein by Peter Metzger, from the west line of Sandusky Street as now established.

Course 1. Thence South at right angles with the north line of said premises conveyed to the Grantor herein by Peter Metzger, a distance of 143.77 feet more or less to the south line of said premises conveyed to the Grantor herein by Peter Metzger;  
Course 2. Thence south 87° 30' west along the south line of said premises conveyed to the Grantor herein by Peter Metzger, a distance of 322.09 feet more or less, to the southwest corner

of said premises conveyed to the Grantor herein by Peter Metzger;

Course 3. Thence north  $49^{\circ} 55'$  west a distance of 212.5 feet to the northwest corner of said premises conveyed to the Grantor herein by Peter Metzger;

Course 4. Thence north  $87^{\circ} 30'$  east along the north line of said premises conveyed to the Grantor herein by Peter Metzger, a distance of 478.57 feet more or less to the true place of beginning.

Third Parcel: Being part of the Yenkin-Rosenberg tract shown of record in Deed Book 843, Page 442, Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

Beginning at an iron pin at the most westerly point or corner of the above mentioned Yenkin-Rosenberg tract; thence from said beginning point S.  $49^{\circ} 55'$  E., with the west line of said tract 107.57 ft. to a point in said line; thence N.  $40^{\circ} 05'$  E. 98.86 feet to the intersection of said course with the north line of the above mentioned tract; thence with the north line of said tract S.  $87^{\circ} 30'$  W. 146.1 feet to the place of beginning.

The first and second parcels of land above described are owned of record by the city of Columbus, Ohio, and by The Standard Oil Company, an Ohio corporation, respectively, while the third parcel of land hereinafter described is owned of record by Jacob Yenkin, Abraham I. Yenkin and Ben Rosenberg. Upon examination of the abstract of title submitted, I am of the opinion that the respective owners of record of these parcels of land, above named, each has a good merchantable fee simple title to the respective parcels of land owned by them, subject to the lien of such taxes as may stand as a charge against the second and third parcels of land above described. Nothing is stated in the abstract of title with respect to these taxes, although there is a recital in the deed of The Standard Oil Company, hereinafter referred to, which indicates that the only taxes against the second parcel of land, above described, are the undetermined taxes for the year 1935. It is suggested that a check of the records may be made with respect to the taxes on these parcels of land before the transaction for the acquisition of these parcels is closed by the acceptance of the deeds conveying the same.

At the time this abstract of title was submitted to me, which was on or about the 26th day of December, 1935, there were likewise submitted three deeds executed by the respective owners of the parcels of land above described, conveying the same to the state of Ohio. These

deeds were not acceptable to me as your legal adviser for the reason that each of them purported to convey the parcel of land therein described to the state of Ohio, subject to a condition subsequent that the property should revert to the grantor in the event that the construction work on the armory building was not commenced within a period of time stated in each of these deeds, which period of time, in my opinion, was in each case entirely unreasonable. And although it was realized that these parcels of land were to be conveyed to the state of Ohio without monetary consideration and were to be conveyed to the State as a gift of these lands for armory purposes, my view was and is that the conditions made in said deeds were and are unreasonable, and were and are such as would preclude your authority to accept these deeds under the provisions of sections 18 and 5239, General Code, which are applicable with respect to conveyances of this kind for the purpose above indicated.

Some time after I expressed my disapproval of the deeds above referred to for the reasons above stated, to-wit, on February 4, 1936, three deeds executed respectively by the city of Columbus, The Standard Oil Company and Jacob Yenkin, et al., conveying to the state of Ohio the several parcels of land above described, were submitted for my examination and approval. Each and all of these deeds have been executed and acknowledged by the grantor or grantors therein in the manner provided by law and the deed last above referred to has likewise been executed and acknowledged by the respective spouses of Jacob Yenkin, Abraham I. Yenkin and Ben Rosenberg, the grantors therein, to the end that all outstanding inchoate dower interests in the property may be by said deed released to the State. The form of each of these deeds is such that the same is legally sufficient to convey the parcel of land therein described to the State by fee simple title. It is to be noted in this connection, however, that each of these deeds conveys to the state of Ohio the parcel of land therein described, subject to the condition that the parcel of land thereby conveyed, together with contiguous lands (conveyed by the other deeds), shall be used for armory purposes and that the construction work upon the naval reserve armory to be erected on these lands shall be commenced within the several periods of time mentioned in these deeds; and each of these deeds provides for the reversion of title in case of a violation of the conditions mentioned in the deed. In the deed tendered by the city of Columbus, it is provided that the conveyance is made by the city as the grantor in the deed, on the express condition that if work is not begun on the construction of the naval reserve armory within twenty-four months from January 20, 1936, when the ordinance authorizing the deed was passed, or if the state of Ohio should ever cease to use said premises for either a naval reserve armory

site or any state armory site, the land described in the deed shall revert to and become the property of the City of Columbus. In the deed tendered by The Standard Oil Company it is provided that the conveyance is made by the grantor on the express condition that the premises described in the deed shall be used only as a site for a state naval reserve armory or any state armory and that the construction of a naval reserve armory shall be commenced on the premises described in the deed and adjoining premises acquired for that purpose not later than the 18th day of March, 1937, and that in the event of the violation of such conditions the title to the property described in the deed should revert to the grantor, his successors and assigns. As above indicated, the deed tendered by Jacob Yenkin, et al., conveying to the State the third parcel of land above described, likewise contains conditions relating to the use of the premises therein described and to the time when the work on the naval reserve armory shall be commenced. In this deed it is provided that the premises therein described are conveyed to the state of Ohio, the grantee therein, only on the condition that the State erect and maintain a naval reserve armory on said property or adjoining said property, and that the property described be used as a part of the naval reserve armory site, or as a part of the land on which said naval reserve armory is maintained. It is further provided in and by said deed that if construction of said naval reserve armory is not started on said property or adjoining thereto within two years from the date of the deed, which is the 24th day of January, 1936, or if the State should cease to use said premises for either a naval reserve armory or any state armory site, then in either or all of such events the title to the property described in the deed shall revert to the grantors, their heirs and assigns.

Although the conditions set out in these respective deeds covering the several parcels of land above described are, in a sense, limitations on the fee simple title to these parcels of land which the State would otherwise acquire by these deeds, and although conditions of this kind could not be approved in deeds whereby the State is acquiring lands by purchase, I am inclined to the view that inasmuch as the several grantors in these deeds are conveying the property here in question to the State by way of gift for the purpose indicated by the deeds, these conditions are reasonable and are such as may properly appear in deeds conveying property by way of gift to the State for purposes of this kind. Your authority to acquire in the name of the State real property for armory purposes by way of gift from the owner or owners of such property is perhaps that granted by section 5239, General Code, rather than by the more general provisions of section 18, General Code. I am inclined to the view, however, that section 18, General Code, is to be read in connection with the provisions of section 5239, General Code, with

respect to the authority of the State, acting through you as Adjutant General, to accept these deeds subject to the conditions therein stated. In this connection, it is to be noted that section 18, General Code, provides, among other things, that the State may receive by gift, lands and hold and apply the same according to the terms and conditions of the gift and that such gifts may be subject to any reasonable reservation. Although you acquire your authority to accept this property for the State under the provisions of section 5239, General Code, rather than under the provisions of section 18, General Code, above noted, the provisions of section 18, General Code, may with propriety be read in connection with those of section 5239, General Code, in the consideration of the question of your authority to accept conveyances of the property here in question subject to the conditions above referred to. And as previously indicated, I am of the opinion that these conditions are reasonable and that you are authorized to accept these deeds on behalf of the State for the purpose of constructing a naval reserve armory on the lands thereby conveyed. In this connection, it is noted that the then Attorney General in an opinion under date of April 21, 1927, opinions of the Attorney General for 1927, Vol. I, page 620, held that there is no requirement of law that the title of the State to lands donated to the State for armory purposes must be conveyed by fee simple title. In this case the city of Cleveland conveyed to the state of Ohio six acres of land, the same being a part of the Brook Park Airfield, as a site for hangars and other buildings to be erected by the State for the housing and training of the 37th Division Air Service. The deed by which this property was conveyed to the State of Ohio contained the following provision:

“Said premises are conveyed to the State of Ohio for military purposes and whenever said above described premises shall cease to be used for military purposes then the title to said premises shall immediately revert to the grantor herein, and all rights of the grantee herein shall thereupon cease and determine.”

The Attorney General, in the opinion above referred to, said:

“The section of the Code above quoted does not require that the title to be conveyed to the state for military purposes be a fee simple, and there are no other sections of the statutes which make any such provision. It is my opinion, therefore, that under the circumstances as outlined in your letter, the city of Cleveland is justified in insisting that the land which it proposes to convey to the State of Ohio shall revert to said city whenever the premises shall cease to be used for military purposes.”

It is obvious that the former opinion of this office here referred to is in line with the conclusion which I have reached with respect to the conditions in the deeds here in question.

With the deeds above referred to are two other deeds executed by The Sterling Motor Truck Company and The W. W. Williams Company, respectively, in and by which these companies remise and release to the state of Ohio their undivided one-half interests into a strip of ground twenty-five feet in width off the north side of the second parcel of land above described, which strip of land on and prior to April 3, 1926, was owned of record by these corporations as tenants in common and which was excepted in deeds executed by them to Flora A. Neilson through whom by mesne conveyances The Standard Oil Company owns and holds the second parcel of land above described. This explains the fact that The Standard Oil Company in its deed to the state of Ohio and in its description of the parcel of land thereby conveyed, has excepted said twenty-five-foot strip of land from its conveyance.

The abstract of title and the deeds herein referred to are approved and the same are enclosed herewith.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5154.

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OFFICES INCOMPATIBLE — MEMBER, CONSERVATION  
COUNCIL MAY NOT HOLD SALARIED POSITION IN  
DIVISION OF CONSERVATION.

**SYLLABUS:**

*A member of the Conservation Council may not at the same time hold a salaried position in the Division of Conservation.*

COLUMBUS, OHIO, February 8, 1936.

HON. L. WOODSELL, *Commissioner, Division of Conservation,*  
*Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“We are desirous of determining whether or not a member of the Ohio Conservation Council may accept a salaried position in the Division of Conservation and continue serving as a member of said Conservation Council.”