

3986.

APPROVAL, CERTIFICATE OF TITLE, ETC., TO LAND IN FRANKLIN TOWNSHIP, TUSCARAWAS COUNTY, OHIO, IN CONNECTION WITH MUSKINGUM WATERSHED CONSERVANCY DISTRICT.

COLUMBUS, OHIO, February 28, 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, chain of title, warranty deed form, surveyor's certificate, contract encumbrance record No. 39 and Controlling Board certificate, relating to the proposed purchase by the Muskingum Watershed Conservancy District of two parcels or tracts of land which are owned of record by one Chastina A. Sterner in Franklin Township, Tuscarawas County, Ohio, which parcels of land are more particularly described by metes and bounds as follows:

*First Parcel:*

A part of Lot Two (2) in the Second Quarter of Township Ten (10) North, Range Three (3) West of the United States Military Survey; and being included within the lines described as follows, to wit:

Beginning at a stone at the southeast corner of the tract herein described, which place of beginning is the following two courses from a stone at the south-east corner of the said Lot Two (2), first along the east line of Lot 2, North four degrees and forty-seven minutes East ( $N 4^{\circ} 47' E$ ) three hundred and thirty-four and nine-tenths (334.9) feet, more or less, to the intersection of the said east line of Lot 2 with the centerline of United States Highway Route Number Two hundred and fifty (250), and thence North forty-nine degrees and ten minutes West ( $N 49^{\circ} 10' W$ ) five hundred and seventy-nine and seven-tenths (579.7) feet, more or less, to the stone at the aforesaid place of beginning; thence from this point of beginning, North forty-three degrees and fifty-three minutes West ( $N 43^{\circ} 53' W$ ) one hundred and thirty-seven (137) feet to a point at the southeast corner of a tract of two hundred and sixty-four thousandths (0.264) of an acre, hereinafter described as an exception within this survey; thence continuing North forty-three degrees and fifty-three minutes West ( $N 43^{\circ} 53' W$ ) two hundred and thirty-eight (238) feet; thence North forty-two degrees and five minutes West ( $N 42^{\circ} 05' W$ ) three hundred and ninety seven (397) feet; thence North seven degrees and thirty-two minutes East ( $N 7^{\circ} 32' E$ ) three hundred and sixty-two and nine-tenths (362.9) feet; thence North fifty-five degrees and forty-seven minutes East ( $N 55^{\circ} 47' E$ ) two hundred and forty seven and eight-tenths (247.8) feet, more or less, to a stone on the north line of said Lot 2 and on the southeast bank of South Fork of Sugar Creek; thence along the said north line of Lot 2, South eighty-one degrees and twenty-eight minutes East ( $S 81^{\circ} 28' E$ ) three hundred and two and eight-tenths (302.8) feet; thence South seven degrees and thirty-two minutes West ( $S 7^{\circ} 32' W$ ) nine hundred and fourteen and one-tenth (914.1) feet to a point on the centerline of the Old Wooster Road; thence along the said centerline of the Old Wooster Road, South forty-seven degrees and eighteen minutes East ( $S 47^{\circ} 18' E$ ) one hundred and forty-eight and six-tenths (148.6) feet; and thence leaving the said centerline of the Old

Wooster Road, South forty-two degrees and forty-two minutes West (S 42° 42' W) twenty-five (25) feet, more or less, to the place of beginning; containing an area of eight (8) acres, more or less.

Excepting therefrom the tract of two hundred and sixty-four thousandths (0.264) of an acre, above mentioned, which was formerly conveyed to Albert Diehl and Carrie Diehl by deed recorded in Volume 212, page 250 of the Deed Records of Tuscarawas County, Ohio; leaving in the First Parcel a balance of seven and seventy-four hundredths (7.74) acres, more or less, lying in Lot 2.

*Second Parcel:*

A part of Lot Three (3) in the Second Quarter of Township Ten (10) North, Range Three (3) West of the United States Military Survey, and being included within the lines described as follows, to wit:

Beginning at a stone described in the above description of the First Parcel as being on the north line of Lot 2 and on the southeast bank of the South Fork of Sugar Creek; thence along the said southeast bank of the South Fork of Sugar Creek, the following three courses, North forty-four degrees and seventeen minutes East (N 44° 17' E) one hundred and twenty-four and eight-tenths (124.8) feet, thence North sixty-two degrees and two minutes East (N 62° 02' E) two hundred and four (204) feet, and thence North seventy-two degrees and two minutes East (N 72° 02' E) sixty-nine and four-tenths (69.4) feet; thence leaving the said southeast bank of the South Fork of Sugar Creek, South seven degrees and thirty-two minutes West (S 7° 32' W) two hundred and forty-seven and three-tenths (247.3) feet to a point on the south line of Lot 3; and thence along the said south line of Lot 3, North eighty-one degrees and twenty-eight minutes West (N 81° 28' W) three hundred and two and eight-tenths (302.8) feet, more or less, to the place of beginning; containing an area of one (1) acre, more or less.

The lands herein conveyed and described as the First and Second Parcels having a combined area of eight and seventy-four hundredths (8.74) acres, more or less, and being all of the lands of the grantor (Chastina A. Sterner) in the said Lot 2 and Lot 3 in the Second Quarter of Franklin Township, Tuscarawas County, Ohio, and being the same land described in conveyances from Melancthon Blough to Chastina A. Sterner, dated November 14, 1925, recorded in Volume 202, page 409, excepting therefrom .116 of an acre, more or less, conveyed by Melancthon Blough to Arthur and Lula Dodson, by deed dated April 14, 1922, recorded in Volume 192, page 641, and excepting therefrom .264 of an acre, more or less, conveyed by Chastina Sterner (Sterner) and husband to Albert and Carrie Diehl, by deed dated November 19, 1930, and recorded in Volume 212, page 250, of the Tuscarawas County, Ohio, deed records.

Also conveying hereby all rights which the Grantors or their predecessors in title have or claim to have, either directly or indirectly, by way of reversion or remainder.

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 Chastina A. Sterner owns and holds this property. From the examination thus made by me, I find that Chastina A. Sterner has a good merchantable fee simple to the above

described property, subject to the lien of the undetermined taxes on the property for the year 1934 estimated \$8.66.

In the history of title, some documents contained faulty descriptions, but premises under consideration may be identified by the references to adjoining land, and a quit claim deed is being obtained, to clear up any doubt. Grantee in deed to Chastina A. Sterner should have been spelled "Starner." This is explained in the deed submitted herewith.

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 Chastina A. Sterner and by Calvin Sterner, her husband, 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 Chastina A. Sterner and Calvin Sterner, will be effective to convey the property here in question to the Muskingum Watershed Conservancy District by full fee simple title, free and clear of the inchoate dower interest of Calvin Sterner, with a warranty that the property is free and clear of all encumbrances whatsoever.

As a part of the files relating to the purchase of the above described property, you have submitted to me contract encumbrance record No. 39. 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 record 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 \$2350. 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 Chastina A. Sterner, is approved, and the certificate of title, warranty deed, contract encumbrance record No. 39 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.*

3987.

MILK—PRODUCERS MAY EMPLOY COMMON DESIGNATION TO MARK MILK BOTTLES.

**SYLLABUS:**

*A number of producers of milk may mark and designate milk bottles with a common designation, under section 13169 of the General Code.*

COLUMBUS, OHIO, February 28, 1935.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent letter which reads:

“Section 13169 of the General Code says:

‘Any person, firm or corporation engaged in the manufacturing, bottling or selling of milk, cream, etc., and using in the manufacture, sale and delivery of the same any bottles, etc., or other containers, may mark and designate such bottles, etc., and other containers with his or its name or other mark or device branded, stamped, engraved, etched, blown or otherwise produced upon the same, and file in the office of the Secretary of State;

Now, I would appreciate your rendering this office an opinion under the above Section as to whether or not a number of independent milk producers might be allowed to use a bottle with a common brand or stamp upon the same, if they were to file such application with the Secretary of State in the name of all of such producers who were intending to use said brand or stamp; or whether each would be required to file an independent brand or stamp for use on the bottles they are each using in the distribution and sale of milk and cream in this County?’”

The section, a part of which you quote, also provides:

“When any such person, firm or corporation shall have complied with the provisions of this section, he or it shall thereupon be deemed the proprietor of such name, mark or device and of every such bottle, \* \* \* or other container upon which may be branded, stamped, etched, engraved, blown or otherwise produced upon the same, such mark or device.”

An analysis of section 13169, *supra*, discloses that the purpose of its enactment was to provide protection to any person, firm or corporation engaged in the business of the manufacture, sale or distribution of the products mentioned therein. In the case of *State vs. Doyle*, 17 O. C. C. (N. S.), 289, it was held: