

“ * * * but when a plan has been adopted as provided in this section the approval of plats provided for herein shall be in lieu of the approvals provided for by any other section or sections of the General Code, so far as territory within the approving jurisdiction of the planning commission, as provided in this section, is concerned.”

Construing together Section 3586-1, General Code, with the exception contained in Section 3583, General Code, which provides :

“ * * * except, however, that nothing herein contained shall be construed to apply to such plats or maps as are required by Section 3586-1 of the General Code to be approved by a city planning commission.”

I am of the opinion that a city planning commission which has adopted a plan for the territory within three miles of the corporate limits thereof, has exclusive jurisdiction of the approval of plats for the territory within three miles of the corporate limits of the municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

848.

DEED—LOST BY ORIGINAL GRANTEE OF LAND FROM STATE OF OHIO—
—CONDITIONS NECESSARY FOR GOVERNOR TO CONVEY PREMISES TO PRESENT CLAIMANTS.

SYLLABUS:

Under Sections 8525 and 8527, General Code, the Governor is not authorized to execute the deed of the State of Ohio therein provided for, conveying particular lands therein described to a named grantee thereon, unless it appears that a former deed of the State was duly executed under proper authority by which such lands were conveyed to such grantee or to his predecessor in title, that said former deed has been lost or destroyed without any record of said deed having been made, and that the full amount of the purchase money for said former conveyance has been paid.

COLUMBUS, OHIO, September 10, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This is to acknowledge receipt of your recent communication to me with which you enclosed a communication received by your office from Colton and Wendt, Attorneys-at-Law, Akron, Ohio, in which communication last above referred to, you are requested to execute deeds for parcels of Lots 251 and 252 in the town plat of Akron to take the place of a deed which is supposed to have been executed by the State of Ohio on or about February 1, 1844, by which said Lots 251 and 252 in the town plat of Akron were conveyed by the State to one Jedediah D. Commins, which deed is now lost.

An examination of the abstract of title which has been submitted with the communication of the attorneys above mentioned, shows that on May 13, 1826, the lots here in question, together with a number of other lots in the town plat of the then village of Akron were conveyed by one Paul Williams, then the owner of the same,

to the State of Ohio, and in the deed conveying said lots it was stated that the same was given "in consideration of the benefits which will result to the community in general and to myself in particular from the construction of the Ohio Canal and from the foundation of a convenient basin in the village of Akron in said township and county which works are now in a state of progression and also in consideration of the sum of one dollar."

There is no record of the conveyance of said lots by the State of Ohio to any person or persons other than appears in the County Auditor's Transfer of Lands, Book 1, page 70, where there appears a transfer of both of said lots by separate entries from the State of Ohio to one Jedediah D. Commins. In said transfer of record there is the following notation: "Transferred Feby. 1, 1844, deed from S----- Request." Thereafter, said lots and the several parcels thereof passed by mesne conveyances in the chain of title down to the present time when it appears that The W. E. Wright Company is the owner of the south three-fourths of said Lots 251 and 252 in the town plat of Akron and one Elizabeth Bell is the owner of record of the north one-fourth of said lots. The request made of you is the execution of deeds by the State of Ohio to said W. E. Wright Company and to said Elizabeth Bell for the portions of said lots by them now respectively held.

On February 7, 1826, an act was passed by the Legislature (24 O. L. 58) by the second section of which the canal commissioners were authorized and empowered to sell all such lands and town lots as had theretofore been, or might thereafter be given, granted or ceded to the State of Ohio for the benefit of the Canal Fund, and by Section 4 of said act it was provided, among other things, that conveyances of lands and town lots sold by the canal commissioners under the provisions of this act should be made in the name of the State of Ohio, signed by the Governor and countersigned by the Secretary of State. Thereafter, by an act passed by the Legislature under date of March 5, 1839 (37 O. L. 45), said board of canal commissioners was abolished and all their powers and duties were vested in and imposed upon a board of public works created and provided for by said act. In this situation, it is altogether probable that if said lots were conveyed by the State of Ohio to said Jedediah D. Commins, such conveyance was in pursuance of a sale of said lots under authority of the act of the Legislature first above referred to.

The communication of the attorneys above mentioned to you in connection with this matter states, however, that a careful search of the files in the office of the Department of Public Works fails to disclose any record of the sale of these lots; and it is likewise stated in said communication that no record of said conveyance has been found in the office of the Auditor of State or the Secretary of State.

The request made of you with respect to the execution of deeds of the State of Ohio to the present record owners of several portions of said lots is predicated upon the authority granted to you in matters of this kind by the provisions of Sections 8525, 8526 and 8527 of the General Code. Section 8525, in so far as it pertains to the question here presented, provides that "when a deed, executed for land purchased of the state is lost or destroyed, or when a person who has an interest in such land, by the use of due diligence cannot find it, and no record exists from which a certified copy can be made to supply the evidence of such deed," the Governor, when satisfied that the original purchase money for such land has been fully paid, shall execute a deed therefor in the name of the original purchaser, which must recite the facts authorizing its making. This section further provides that such deed shall be duly recorded in the office of the Auditor of State, and that such auditor must transmit it to the present claimant.

Section 8526, General Code, provides that such deed shall have the same effect to all intents and purposes as the original deed, had it been duly preserved and re-

corded, or as the deed would have had, made to the original purchaser upon the date of the full payment of the purchase money.

Section 8527, General Code, provides that when the purchaser has died before deed made, and the lands have passed to another, by descent or devise, and the title still remains in him, or when the person to whom the lands have so passed, has conveyed them, or his interest therein, to another person, by deed of general warranty or quit-claim, upon proof of such facts being made to the Governor and the Attorney General, the Governor shall execute the deed directly to the person entitled to the lands, although he derives his title thereto through one or more successive conveyances from the person to whom the lands passed by descent or devise.

In the communication from the attorneys above named, requesting the execution of these deeds by the State of Ohio, it is said:

“Deeds from the state, we believe, are governed by G. C., Sections 8523 to 8529. G. C., Sec. 8525 provides that upon proof of payment in full of the purchase money the Governor may execute a new deed when the old has been lost and cannot be found by the use of due diligence. G. C., Sec. 8527, provides that when the original purchaser from the State has conveyed his interest by Quit Claim or Warranty Deed that upon proof of such facts being made to the Governor and the Attorney General, the Governor shall execute the deed directly to the person entitled to the land.

Direct proof of some of these requirements is, of course, impossible. No record or copy of this deed as referred to in G. C., Sections 8524 and 8525, can be found. Altho diligent effort has been made, we are unable to locate the old deed. We can offer no direct proof of payment in full. However, the present owners and their predecessors have continuously occupied said premises for over 85 years without any interference or claim being made by the State of Ohio. It is apparent that a deed was once executed and delivered and the State's records in Columbus show that the State now claims no interest in the premises.”

It is obvious that in matters of this kind you do not have any power or authority other than that given to you by statute, and unless you can find that the conditions exist which under the statute are a predicate to your authority to execute the deeds requested, your authority to execute the same is denied. Before you are authorized to execute the deeds of the State of Ohio here requested you must be satisfied that a deed of the State of Ohio, duly executed and under proper authority was delivered to said Jedediah D. Commins conveying to him the lots here in question; that said deed is lost or had been destroyed and that the purchase money for such lands has been fully paid. On the state of facts here presented, I think it can be said as a matter of law that you will not be able to make the findings of fact necessary to authorize you to execute the deeds in question; and although the facts here presented might justify an application to the Legislature for the enactment of a special statute authorizing you to execute the deeds requested, I am of the opinion that you have no authority to execute said deeds under the authority of the sections of the General Code above referred to.

Respectfully,
GILBERT BETTMAN,
Attorney General.