

241.

DEED—STATE FROM CIM DICKERSON, ET AL., DESIGNATED PORTION LOT NO. 5, OXFORD TOWNSHIP, BUTLER COUNTY, TO PRESIDENT AND TRUSTEES, MIAMI UNIVERSITY.

COLUMBUS, OHIO, March 4, 1939.

HON. W. P. ROUDEBUSH, *Secretary, Board of Trustees, Miami University, Oxford, Ohio.*

DEAR SIR: There have been submitted to me for my examination and approval an abstract of title, deed, contract encumbrance record No. 1761 and other files relating to a parcel of land situated in Oxford Township, Butler County, Ohio, and which is further described in the abstract of title and deed as follows:

Being lot number five (5) of Cim Dickerson's Subdivision of a part of lot number five (5) in Section number twenty-three (23) of Town five (5), Range One (1) east in Oxford Township, Butler County, Ohio, as the same is known and designated on the recorded plat thereof. The same being subject to an annual ground rent of \$1.00 payable to the Treasurer of The Miami University on January 7th of every year.

From the abstract of title submitted to me, it appears that on January 21, 1908, one Cim Dickerson acquired title to a larger parcel of land designated as Lot No. 3 in Abner Stilson's Subdivision of Lot 5 in Sec-

tion 23, Oxford Township, Butler County, Ohio, which Lot No. 3 was a parcel containing four acres of land. Later, Cim Dickerson subdivided said four-acre parcel of land in which he held a perpetual leasehold interest by mesne conveyances from the original lessee; and as indicated by the plat of Cim Dickerson's Subdivision of this four-acre tract of land above referred to, said parcel was subdivided into six lots numbered from one to six, inclusive. The parcel of land here in question and above described is Lot No. 5 of said subdivision.

On October 4, 1909, Cim Dickerson, his wife Fannie Dickerson joining with him in the conveyance, conveyed said Lot No. 5 of Cim Dickerson's Subdivision to his daughter, Effie B. Dickerson, then intermarried with one Corbin and known as Effie B. Corbin. This conveyance, however, was subject to the reservation by Cim Dickerson of a life estate in the property. Effie B. Dickerson died on about the 12th day of April, 1934, having in the meantime been divorced from her husband, William Corbin, and from one Ernest Warren whom she later married; and at the time of her death she owned and held the above described property by way of a perpetual leasehold interest therein. Some time after her death one Julia S. Howard was appointed administratrix de bonis non of the estate of Effie B. Dickerson, deceased, and on the 10th day of January, 1939, said Julia S. Howard, as administratrix de bonis non of said estate, filed an action in the Probate Court of Butler County, Ohio, for the sale of the above described lot and parcel of land for the purpose of paying the debts of said estate. Pursuant to further proceedings in said case, Julia S. Howard, as such administratrix de bonis non, was authorized to sell the property at private sale and pursuant to this authority she sold the property to the President and Trustees of Miami University, which sale was later confirmed by order of said court.

Cim Dickerson who, as above noted, reserved a life estate on the conveyance of this property to his daughter Effie B. Dickerson, then Effie B. Corbin, was not made a party to the proceeding in the Probate Court of Butler County for the sale of the property; and I assume from this fact and from the lapse of time since his conveyance of the property to his daughter, that Cim Dickerson is dead and that his interest in this property has terminated. In this view and from the facts gathered by me from this abstract of title, I find that Julia S. Howard, as administratrix de bonis non of the estate of said Effie B. Dickerson, deceased, acting pursuant to the order of the court in the case above referred to, had a right to sell this property at private sale to the President and Trustees of Miami University and that at this time the property so sold is free and clear of all encumbrances except general taxes on the property for the year 1937 and prior delinquent taxes amounting in the aggregate to \$38.14 and except the undetermined taxes on the property for the year 1938, the amount of which has been estimated by the County Treasurer of Butler County to be the sum of \$7.02. In addition to this, the ab-

abstract of title shows that the property is delinquent with respect to the ground rent due and payable thereon and that the amount of such ground rent, together with the interest thereon up to and including the January, 1939, payment thereof, is the sum of \$5.60. Provision should be made for the payment and satisfaction of these taxes and ground rents before the transaction for the purchase of this property is closed by the issue of the warrant covering the purchase price of the property.

Upon examination of the deed tendered by Julia S. Howard, administratrix de bonis non of the estate of Effie B. Dickerson, deceased, I find that said deed has been properly executed and acknowledged and that the form of this deed is such that the same affirmatively shows on its face the authority of said grantor to convey this property to the President and Trustees of Miami University, and the form of this deed is otherwise such that the same is legally sufficient to convey to the President and Trustees of Miami University all of the right, title and interest which Effie B. Dickerson owned and held in this property at the time of her death, which interest as above noted was a perpetual leasehold estate and interest therein, subject to the ground rents provided for in the lease under which she owned and held this property. And I am of the opinion that upon the delivery of this deed and the acceptance thereof by the President and Trustees of Miami University said President and Trustees of Miami University, as a body corporate, will own and hold this property by fee simple title, subject only to the exceptions above noted with respect to the lien of current and delinquent taxes on the property, if such taxes are not paid before the close of the transaction for the purchase of this property.

Subject only to the exception above noted with respect to said taxes and ground rents, the title to this property is hereby approved as is the deed tendered by Julia S. Howard, as administratrix de bonis non of said estate, for the conveyance of this property to the President and Trustees of Miami University.

Contract encumbrance record No. 1761, which has been submitted to me as as part of the files relating to the purchase of the above described property, has been properly executed and the same shows a sufficient balance, otherwise unencumbered, in the land rents appropriation to the credit of Miami University to pay the purchase price of said property, which purchase price is the sum of \$1,500.00. Inasmuch as the purchase price of this property is to be paid from said Miami University land rents and not otherwise, no approval of the purchase of this property by the Controlling Board was or is necessary. I am accordingly approving said contract encumbrance record and the same, together with the abstract of title and deed, is being forwarded with this opinion to the Auditor of State for his further attention in executing the warrant covering the purchase price of the property upon voucher therefor, which, I

assume, you have forwarded to him for this purpose. A copy of this opinion is being forwarded direct to you.

Respectfully,
THOMAS J. HERBERT,
Attorney General.