

from the appropriation account the money necessary to pay the purchase price thereof.

I am herewith returning to you said Certificate of Title No. 56,886, said Warranty Deed and Contract Encumbrance Record No. 18, to the end that after an adjustment of the matters herein noted as exceptions to the title, a voucher may be issued covering the purchase price of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

588.

APPROVAL—CORRECTED CERTIFICATE OF TITLE, WARRANTY DEED, AND CONTRACT ENCUMBRANCE RECORD FOR A TRACT OF LAND IN McCUE'S LITTLE FARMS ALLOTMENT, GREEN TOWNSHIP, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, May 13, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval certificate of title No. 56851 executed by The Northern Ohio Guarantee Title Company of Akron, Ohio, under date of February 26, 1937, a warranty deed and contract encumbrance Record No. 23, relating to the proposed purchase by the State of Ohio for the use of your department of a parcel of land situated in Green Township, Summit County, Ohio, and known as being Lot No. 4 in the C. C. McCue's Little Farms Allotment in the west half of the northwest quarter of Section 19, Green Township, as surveyed by S. G. Swigart and Son, and recorded in Plat Book 36, page 7, Summit County Records, together with all the hereditaments and appurtenances thereof, but subject to all legal highways, and excepting and reserving from the above described land a certain right of way of The Canton, Massillon and Akron Railroad Company extending through said property, as recorded in Vol 273, page 613 of the Deed Records in the office of the County Recorder of Summit County, Ohio.

Upon examination of the certificate of title submitted, I find that Bunyan C. Martin and Gladys V. Martin have a good merchantable fee simple title to the above described parcel of land and that they own and

hold the same free and clear of all encumbrances except as to the encumbrances hereinafter noted.

Before referring to the encumbrances hereinafter mentioned with respect to the above described property. It is noted that the reservation from said lot of a right of way of The Canton, Massillon and Akron Railroad Company refers to a conveyance executed by one Charles A. Smith to said railroad company under date of August 14, 1901, granting by apparent fee simple title a right of way through an eighty-acre tract of land then owned by said Charles A. Smith and out of which the above described and other lots in C. C. McCue's Little Farms Allotment were laid out. This railroad right of way has been referred to in former opinions of this office relating to the title of other lots in this allotment which you have acquired in connection with the Nimisila Creek Basin Reservoir Project and nothing further need be said concerning the matter in this opinion.

Some of the exceptions to the title of Bunyan C. Martin and Gladys V. Martin in and to the above described lots are likewise referred to in former opinions of this office. This is true with respect to the telephone pole line easement granted by said Charles A. Smith to one Charles E. Wise under date of March 16, 1907. The same is true of the right of way easement granted by said Charles A. Smith to The Tide Water Pipe Company, Limited, in and by which said company was given the right to lay and maintain pipe lines in and over the eighty-acre tract of land then owned by Smith. Your attention has likewise been previously called to the oil and gas lease executed by C. Clifton McCue and Augusta M. McCue, his wife, to The East Ohio Gas Company under date of August 16, 1928. You are familiar with the matters referred to in these exceptions and no further mention will be made of the same here.

It is noted in this connection that under date of November 19, 1930, George M. McEwen, who then apparently owned and held the above described lot or who possessed some interest therein, executed an instrument in and by which he granted to The East Ohio Gas Company the right to lay and maintain and operate a pipe line for the transportation of gas in and through said property. It does not appear from the certificate of title or from any other information at hand as to what, if anything, has been done by The East Ohio Gas Company under said easement thus granted to it or as to how or in what manner said easement will affect the use which your department desires to make of this property.

On September 10, 1935, Bunyan C. Martin and Gladys V. Martin executed a mortgage on this property to one Elizabeth E. Stepfield to secure the payment of a promissory note of even date therewith in the sum of \$1,000.00, with interest at six per centum thereon computed semi-

annually. It does not appear that this mortgage has been canceled of record and the same is a lien upon the property to the extent of the amount remaining unpaid on the note secured thereby, together with accrued interest thereon.

In this connection, it is noted that on February 8, 1937, Bunyan C. Martin and Gladys V. Martin executed a second mortgage on this property to one Virginia N. Hancock. This mortgage, which was given on the above described and other lands of the mortgagors, was executed for the purpose of securing a promissory note of even date therewith in the sum of \$682.50, with interest at six per centum per annum. This mortgage has not been canceled of record and the same is a lien on the above described lot to the extent of the amount of money remaining unpaid on the promissory note secured thereby, together with accrued interest thereon.

In addition to the exceptions above mentioned, it is noted that there are set out in this certificate of title two judgments against Augusta M. McCue who succeeded to the title to the lot here in question above described and to other lots in C. C. McCue's Little Farms Allotment, on the death of C. C. McCue, her husband. One of the judgments here referred to is a judgment in the sum of \$971.88 recovered under date of March 29, 1932, by The Real Estate Mortgage Company in an action then pending in the Common Pleas Court of Summit County. Execution was thereafter issued on this judgment and on August 25, 1934, the same was levied on the above described lot and upon other lands in said Little Farms Allotment. The other judgment referred to was one rendered some time prior to March 28, 1934, in favor of the Brown-Graves Company against C. C. McCue and Augusta McCue in and for the sum of \$368.00, plus costs in the case. On said date, to wit, March 28, 1934, a writ of execution was received by the Sheriff of Summit County on this judgment and on the same day he levied the same upon the lot here in question and upon other lands.

I assume that the abstractor in making up this certificate of title noted these judgments for the reason that it was thought that the same or the executions issued thereon were and are liens upon this property. And upon this certificate of title relating to Lot 4 in C. C. McCue's Little Farms Allotment, the property here in question, I am unable to say whether these judgments are liens upon this property or not. By reference to the certificate of title relating to Lot 5 in C. C. McCue's Little Farms Allotment, I find that under date of January 21, 1930, both Lots 4 and 5 in said allotment were sold to George M. McEwen and Alice M. McEwen by Augusta M. McCue, as executrix of the estate of C. C. McCue, pursuant to an order of sale issued by the Probate Court of Summit County in a proceeding instituted in that court by Augusta M.

McCue, as such executrix, to sell these lots and other property to pay the debts of the estate of C. C. McCue. It appears further from the certificate of title relating to said Lot 5 that under date of February 12, 1937, Augusta M. McCue, as executrix, conveyed said lot to George M. McEwen. There is nothing in the certificate of title relating to Lot 4 in said allotment to show whether said lot was conveyed to George M. McEwen by said executrix pursuant to the sale of this lot made to them under date of January 21, 1930, as aforesaid; neither is there any abstract of said deed of conveyance or of the deed in and by which Bunyan C. Martin and Gladys V. Martin obtained title to this property. If said Lot 4 in this allotment was conveyed to George M. McEwen and Alice M. McEwen by Augusta M. McCue, as executrix, pursuant to said sale and order of sale, it may well be that the case and proceeding in the Probate Court pursuant to which this lot was sold and conveyed to them would be a *lis pendens* with respect to said judgments against Augusta M. McCue and against the executions issued and levied on this lot, and that said purchasers took title to said lot unaffected by said judgments and executions thereon. And in such case if Bunyan C. Martin and Gladys V. Martin took title to this lot by conveyance from George M. McEwen and Alice M. McEwen, they would likewise hold their title to this lot free and clear of such judgments and executions thereon. However, as above noted, it does not appear how or through whom Bunyan C. Martin and Gladys V. Martin obtained title to this property. And in this situation, I am not in position to approve their title to this property with respect to the judgments and executions above referred to. It is suggested, therefore, that the certificate of title be corrected so as to set out therein an abstract of the deed or deeds by which the title to this lot passed from Augusta M. McCue, individually or as executrix of the estate of C. C. McCue, down to Bunyan C. Martin and Gladys V. Martin.

The following is stated in said certificate of title with respect to the special assessments and general taxes which are a lien upon the property:

“There are no Special Taxes charged against the premises above described on the Treasurer’s 1935 General Tax Duplicate or shown on the County Auditor’s 1935 Certified List of Special Assessments except as assessment for improvement of South Main Street Road which is payable in twenty semi-annual installments of \$10.43 each, beginning December 20, 1926.

The status of said assessment is as follows:

Assessments for the first half of 1935, amounting to \$10.43, are delinquent; penalty \$1.04.

Assessments for the second half of 1935, amounting to \$10.43, are delinquent; penalty \$1.04.

There is listed on the Treasurer's Tax Duplicate, Green Township, in the name of C. Clifton McCue:

McCue Little Farms Lot 4 All

Valuation: Lands \$200.00, Buildings \$700.00. Total \$900.00.

Taxes for the first half of 1935, amounting to \$7.56, are delinquent; penalty 76 cents.

Taxes for the last half of 1935, amounting to \$7.56, are delinquent; penalty 76 cents.

Taxes for 1936 are a lien."

In addition to the general taxes above noted, it is observed that the general undetermined taxes on this property for the year 1937 are a lien.

The warranty deed tendered to the State of Ohio by Bunyan C. Martin and Gladys V. Martin and likewise contract encumbrance record No. 23 covering the purchase of this property appear to be in proper form. I am, however, holding these files until I receive a corrected certificate of title abstracting the deed or deeds in the chain of title to Bunyan C. Martin and Gladys V. Martin. I am herewith enclosing the certificate of title relating to this lot.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

589.

APPROVAL—GRANT OF EASEMENT EXECUTED TO THE STATE OF OHIO BY THE COUNTY COMMISSIONERS OF CLARK COUNTY, OHIO, FOR CERTAIN LANDS IN BETHEL TOWNSHIP, CLARK COUNTY, OHIO.

COLUMBUS, OHIO, May 13, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval grant of easement No. 674, in duplicate, executed to the State of Ohio by the County Commissioners of Clark County, Ohio, together with a copy of resolution authorizing the said county commissioners to sign the same, conveying to the State of Ohio, for the purposes therein