

Kuhner and King, 107 O. S. 406, this office has repeatedly held that in the absence of a decision by a proper court to the contrary, publication of the notice of election for a period less than twenty-eight days is not a sufficient compliance with Section 2293-21 of the General Code.

The transcript is incomplete in other respects; however, in view of the foregoing, I am compelled to advise you not to purchase the above issue of bonds.

Respectfully,

GILBERT BETTMAN,
Attorney General.

310.

APPROVAL, BONDS OF NORTH CANTON VILLAGE SCHOOL DISTRICT,
STARK COUNTY, OHIO—\$95,000.00.

COLUMBUS, OHIO, April 15, 1929.

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

311.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF MARY ELIZABETH
BAIRD, IN BENTON TOWNSHIP, HOCKING COUNTY, OHIO.

COLUMBUS, OHIO, April 16, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—There have been submitted for my examination and approval a corrected abstract of title, a warranty deed, encumbrance estimate No. 4768 and Controlling Board's certificate relating to several contiguous tracts of land in Benton Township, Hocking County, Ohio, aggregating about 182 acres which is owned of record by one Mary Elizabeth Baird. The lands here under consideration are more particularly described as follows:

“Being the east half of the northeast quarter of Section 16, containing eighty-two acres. Also the northwest quarter of the northwest quarter of Section 15, containing forty acres, more or less, all being in Township 11 of Range 18, Hocking County, Ohio.

Also the following described real estate: Being the south half of the northwest quarter and the northeast quarter of the northwest quarter of Section 15.

Excepting from the above described tract of land a part of the east half of the northwest quarter of Section 15, Township 11, Range 18, beginning at the northeast corner of said quarter section; thence south on the quarter line

160 rods to the southeast corner of said quarter section; thence west on the south line of said quarter section 60 rods; thence north 160 rods to the north line of said section; thence east on the north line 60 rods to place of beginning, containing 60 acres.

Also subject to a right of way 20 feet wide, through lands in Sections 15 and 16, to the public highway."

The original abstract of title submitted was the subject of Opinion No. 3132 of this department directed to you under date of January 12, 1929. In this opinion the title of said Mary Elizabeth Baird on the abstract of title submitted was disapproved. The corrected abstract of title contains further information by way of affidavits made and executed by persons of competent knowledge which corrects some of the matters to which objection was made in the former opinion of this department, above referred to, and other information set out in the corrected abstract by way of affidavit shows that Mary Elizabeth Baird, her first husband, John Hamilton and their predecessors holding the record title to said lands have owned and held the same by open, continuous and adverse possession for such length of time as to justify me in the opinion and conclusion that the other defects of title noted in said former opinion may be safely waived.

However, a re-check of this abstract of title shows another defect in the title of said Mary Elizabeth Baird to a part of the lands here under investigation, the same being the south half of the west half of the west half of the northwest quarter of Section 15, Township 11, Range 18, consisting of 20 acres of land. The question with respect to the title of said Mary Elizabeth Baird to said 20 acres of land arises in the following manner:

On February 28, 1894, one Owen Hamilton, being the owner of the whole of the northwest quarter of Section 15, Township 11, Range 18, executed and delivered to John Hamilton a warranty deed by which together with other property he conveyed to said John Hamilton the west half of the west half of the northwest quarter of said Section 15. Thereafter the remainder of the lands in the northwest quarter of Section 15 having passed by mesne conveyance to one Joseph O. Hamilton, he, on March 2, 1904, conveyed the remainder of the lands in the northwest quarter of Section 15 to said John Hamilton and Mary Elizabeth Hamilton, his wife, as tenants in common; said Mary Elizabeth Hamilton being one and the same person as Mary Elizabeth Baird, the present owner of record of all of the lands here under investigation.

On August 10, 1909, about a week before his death, John Hamilton executed and delivered to his wife, Mary Elizabeth Hamilton, under and by the name of Elizabeth, a quit-claim deed. In the first paragraph of the granting clause of said deed he conveyed and quit-claimed to his wife, among other property, all of his right, title and interest to the northwest quarter of the northwest quarter of Section 15. By the second paragraph of the granting clause of said deed he conveyed and quit-claimed to his wife "the undivided one-half" of the south half of the northwest quarter and the northeast quarter of the northwest quarter of Section 15.

Inasmuch as John Hamilton only had an undivided one-half interest in the lands in the northwest quarter of Section 15, other than those in the west half of the west half of said northwest quarter of Section 15, his quit claim of an undivided half interest to his wife was effective to confer upon her the whole title to all of the lands in the northwest quarter of Section 15, other than those in the west half of the west half of said northwest quarter of Section 15. As to the lands in this tract consisting of 40 acres and the title to which was in John Hamilton alone, the conveyance and quit-claim made by him of all his right, title and interest in the northwest quarter of the northwest quarter of Section 15 was effective to confer upon his wife, the whole title to the north half of said forty acre tract. But the conveyance and quit claim of

the south half of said forty acre tract the title to which stood in John Hamilton alone, was not conveyed to his wife, otherwise than by the second paragraph of the granting clause of said deed which as above noted only conveyed and quit-claimed to her the undivided one-half. As said John Hamilton had the whole title to said 20 acres, being the south end of said 40 acre tract, his deed was effective to convey to his wife only an undivided one-half interest in said 20 acre tract. As to the other undivided one-half interest of John Hamilton in said 20 acre tract he died intestate, and the same descended by operation of law to his children and their legal representatives, subject to the dower interest of his wife relict, who, as above noted, was and is the same person as Mary Elizabeth Baird.

As above noted, the facts which give rise to the exception here noted occurred nearly twenty years ago. It does not appear that the children of John and Mary Elizabeth Hamilton or anybody else has ever raised any question with respect to this matter, and in this view it would seem that the moral risk in accepting a deed from Mary Elizabeth Baird is not perhaps very great, and that the State would be amply protected by the warranty in the deed of Mary Elizabeth Baird to the State. However, this is a matter which you and the Board of Control of your department must determine.

The corrected abstract of title submitted shows that the taxes for the year 1928 have been paid. During the pendency of the proceedings relating to the purchase of these lands the taxes for the year 1929 have become a lien. Inasmuch as the warranty deed of Mary Elizabeth Baird was executed and delivered in December, 1928, and the same has been accepted by your department, subject to the approval of the title of Mary Elizabeth Baird to these lands, it would seem that if your department determines to take said lands that said land should go on the tax exempt list as of the time of the execution and delivery of said deed to your department. Moreover, as to this point it may be noted that in an opinion of this department under date of June 16, 1917, Opinions of the Attorney General, 1917, Volume II, page 1024, it was held that "the lien imposed by Section 5671, General Code, upon real property for taxation thereon is that of the State; and when thereafter the State acquires the fee simple title to such property the lien for such taxes is merged in the larger title of the State and thereby becomes lost." Court decisions supporting this conclusion may be noted as follows: *Reid vs. State*, 74 Ind. 252; *Smith vs. Santa Monica*, 162 Calif. 221; *Foster vs. City of Duluth*, 120 Minn. 484.

An examination of the warranty deed of Mary Elizabeth Baird shows that the same has been properly executed and acknowledged and that it is in form sufficient to convey to the State of Ohio a fee simple title to the lands here in question, free and clear of all encumbrances. The deed in itself will not, of course, cure any defect in the title to any part of the lands here under investigation other than as the State may be protected by the warranty clause therein contained.

Encumbrance estimate No. 4768 has been properly executed, and the same shows that there are sufficient balances in a proper appropriation account to pay the purchase price of said lands. I likewise note that the purchase of said lands was approved by the Controlling Board, as appears by the certificate of the Secretary of said board under date of November 16, 1928. Said corrected abstract of title, warranty deed, encumbrance estimate and Controlling Board's certificate are herewith returned for your consideration and action.

Respectfully,
GILBERT BETTMAN,
Attorney General.