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APPROVAL—ABSTRACT OF TITLE AND WARRANTY DEED
RELATING TO THE ACQUISITION BY THE STATE OF
OHIO OF A TRACT OF LAND IN HUNTINGTON TOWNSHIP,
LORAIN COUNTY, OHIO.

COLUMBUS, OHIO, October 7, 1937.

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

• DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title and warranty deed relating to the acquisition by the State of Ohio through the Board of Control of the Ohio Agricultural Experiment Station of a tract of land heretofore owned of record by one Guy B. Findley in Huntington Township, Lorain County, Ohio, and which tract of land, together with the reservations upon which the same is to be conveyed to the State of Ohio, is set out and described in the warranty deed of said Guy B. Findley as follows:

Known as being a part of Tract Number Seven (7), of said township, bounded and described as follows: Beginning in the Westerly line of Tract Number Seven (7), being also the center line of the Ashland-Sullivan-Oberlin Road at the Northwesterly corner of lands in said Tract Number Seven (7) now owned by the State of Ohio; thence in the center line of said road and westerly line in Tract Number Seven (7), North $0^{\circ} 51'$ East 2204.0 feet to a point; thence north $89^{\circ} 51'$ East 3458.07 feet to a point; thence south $0^{\circ} 33'$ West 2233.0 feet to an iron pin in the Northerly line of lands of said State of Ohio; thence along said northerly line North $89^{\circ} 40'$ West 3469.32 feet to the place of beginning and passing through an iron pin set 30 feet easterly therefrom containing within said bounds one hundred seventy-six and $395/1000$ (176.395) acres of land as surveyed by Warden & Laundon, March, 1923, be the same more or less, but subject to all legal highways, being the same lands conveyed to grantors by The First Wellington Bank on March 25, 1937.

THE BOARD OF CONTROL OF THE OHIO AGRICULTURAL EXPERIMENT STATION, or a succeeding similar body, so long as it may exist, shall have the management of said lands. This deed is made as a gift, and is given

and accepted upon the express condition and for the sole consideration that said lands shall forever be used exclusively as a State Forest, for the production of timber and for experiments with forestry projects. Should said lands or a substantial part thereof cease to be so used, they shall then revert to the grantors, their heirs or assigns.

Grantors reserve and except all the oil and gas under and within said lands, and the right to lease the same for the production thereof, so long as either or both of them may live.

Grantors may elect to use said lands until December 31, 1941, unless grantee, prior thereto, has completed the reforestation of other lands heretofore conveyed by them to it.

Grantors reserve all buildings except the dwelling house.

Upon examination of the abstract of title submitted, I find that said Guy B. Findley has a good indefeasible fee simple title to the above described tract of land and that he owns and holds the same free and clear of all encumbrances except taxes on the property for the last half of the year 1936 and the undetermined taxes on the property for the year 1937, and except an oil and gas lease on the property hereinafter referred to. With respect to the taxes above noted, it is to be observed that the warranty deed tendered by Guy B. Findley to the State of Ohio warrants this property against all encumbrances except taxes and assessments that become due and payable on June 20, 1937. The taxes here referred to as excepted from the warranty are the taxes on the property for the last half of the year 1936 which normally were due and payable on June 20, 1937. From this, I assume that your department has made some arrangement with respect to these taxes, either for the payment of the same or for the transfer of the property from the tax list and duplicate to the tax exempt list in the office of the Auditor of Lorain County, Ohio.

Although a number of oil and gas leases have been executed on this property, the only one which seems to be outstanding is one executed by Walter H. Atzberger to The Ohio Fuel Gas Company under date of September 6, 1932. This oil and gas lease was later assigned by The Ohio Fuel Gas Company to The Preston Oil Company. There is nothing in the abstract of title to show that this oil and gas lease has been canceled and inasmuch as the same was for a term of twenty years or more, this lease is now an encumbrance upon the property.

Upon examination of the warranty deed tendered by Guy B. Findley, I find that the same has been properly executed and acknowledged by him and by his wife Jennie C. Findley, and that the form of the deed is such that the same is legally sufficient to convey this property to the State of

Ohio by fee simple title, subject to the conditions and reservations set out in said deed.

In this connection, it is to be noted that this property is conveyed to the State of Ohio as a donation or gift of the property for the uses and purposes stated in the deed conveying this property to the State. And the property is thus acquired under the authority of Section 1173-2, General Code, which provides that the Board of Control of the Agricultural Experiment Station is authorized to purchase and accept gifts, donations or contributions of land suitable for forestry or park purposes. There is nothing in the provisions of this section which in terms authorizes your Board to accept a gift or donation of lands subject to conditions and reservations such as are set out in the warranty deed above referred to; however, the provisions of Section 1173-2, General Code, are to be read in connection with the more general provisions of Section 18, General Code, which authorizes the State or any officer or board thereof to receive by gift lands or other properties and hold and use the same according to the terms and conditions of the gift which likewise by the terms of this section may be subject to any reasonable reservation. Inasmuch as under the terms of this deed the property thereby conveyed is to be used exclusively as a state forest, for the production of timber and for experimental forestry projects, the reservation by the grantor of the oil and gas in these lands will not necessarily interfere with the use which your department will make of these lands. And in this view the reservation to the grantor of the oil and gas in and under these lands is in all respects a reasonable reservation under the provisions of Section 18 of the General Code above noted.

Subject only to the observation above made with respect to the taxes on this property and with respect to which, I assume, arrangements have been made by and between your Board or its authorized agents and Mr. Findley, I am approving the title of the grantor in and to this property, as well as the deed in and by which he is conveying this property to this State.

Respectfully,

HERBERT S. DUFFY,

Attorney General.