

1896.

APPROVAL—BONDS SUMMIT COUNTY, OHIO, \$20,000.00,
PART OF ISSUE DATED MAY 1, 1919.

COLUMBUS, OHIO, February 7, 1938.

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

RE: Bonds of Summit County, Ohio, \$20,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above county dated May 1, 1919. The transcript relative to this issue was approved by this office in an opinion rendered to the State Employes Retirement Board under date of September 23, 1937, being Opinion No. 1229.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1897..

PROBATE COURT—CERTIFICATE OF TRANSFER—PROPERTY OF GRANTEE OR GRANTEES—SECTIONS 10509-102 AND 2778 G. C.—COUNTY RECORDER—NO DUTY TO FILE OR RECORD SUCH CERTIFICATES UNTIL NECESSARY FEES PAID—DUTY OF EXECUTOR OR ADMINISTRATOR, GRANTEE OR GRANTEES TO FILE AND RECORD.

SYLLABUS:

1. *A probate court is without authority to require a certificate of transfer, issued under authority of Section 10509-102, General Code, to be returned to his court by the county recorder or any other person, for the purpose of being filed with the other papers in the case. Such certificate of transfer should be and is, the property of the grantee or grantees therein, whether the transfer is made under the interstate laws of this state or by devise under a will.*

2. *No duty rests upon the county recorder to accept for filing or recording, certificates of transfer from the probate court, provided under Section 10509-102, General Code, until the necessary fees provided by Section 2778, General Code, have been paid by the executor or administrator of the estate or by the grantee or grantees in such conveyance.*

3. *When a certificate of transfer, provided by Section 10509-102, General Code, has been furnished by the probate court to an executor or administrator of an estate, or to the grantee or grantees listed in such certificate it is the duty of the administrator or executor, or grantee or grantees to present such certificate to the county auditor, and under the provisions of Section 2768, General Code, have the same endorsed "transferred" or, "transfer not necessary," and pay the proper fees therefor, before such certificate is presented to the office of county recorder to be filed for record.*

COLUMBUS, OHIO, February 7, 1938.

HON. NORTON C. ROSENSTRETER, *Prosecuting Attorney, Ottawa County, Port Clinton, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, which reads as follows:

"I should appreciate your opinion concerning the following situation:

The Probate Court of Ottawa County is of the opinion that a Certificate of Transfer issued by said court upon an application duly filed therein, as provided by Section 10509-102, Ohio General Code, should be returned and filed with the other papers pertaining to the administration of the estate from which the real estate descends, after being duly recorded by the County Recorder, and thereafter kept in the Probate Court.

A devisee of real property located in this county has filed her application for the transfer of real estate devised, a certificate has issued from the Probate Court of Ottawa County and has been transferred and recorded by the Auditor and Recorder of said county, and said devisee contends that the certificate is her property and should be delivered to her and not returned to the Probate Court.

Therefore, your opinion is requested on behalf of said court so that it may meet this situation and future situations where a similar demand is made. It has been the custom of said court to secure such certificate from the Recorder and

file them in the files of the court and to keep a real estate transfer record.

Without regard to the number of persons named in the certificate for the transfer of real estate inherited or devised, does such certificate, after issuing from the Probate Court, become an instrument which could properly be returned to and filed in the Probate Court, after due transfer and recording, or is such instrument in the nature of a deed or affidavit for transfer of real estate as provided in Section 2768, Ohio General Code, so as to become, after recording, the property of the person owning the land, in such affidavit or deed described, and properly returnable to such person; also is it the duty of said Probate Court, under Section 10509-103 and 104 Ohio General Code, to transfer and file with the Recorder for record, such certificate, or does the duty of the Probate Court terminate with the issuance of said certificate so that the duty of transfer and record thereof falls upon the person in whom title appears from the certificate, inasmuch as there is no statutory authority enabling the Probate Judge to pay the cost of transfer in the Auditor's Office and tax the same as costs in the Probate Court."

You have requested my opinion as to whether or not the Probate Judge is authorized under Section 10509-102, General Code, to require the certificate of transfer furnished to the county recorder for the transfer of inherited or devised real estate, to be returned to his office to be filed with the other papers in the case. Reference to the provisions of Section 10509-102, General Code, shows that an administrator or executor is required, prior to the filing of his final account, to file in the Probate Court an application requesting of the court a certificate of transfer as to the real estate in such estate which passes to the heirs or devisees under the laws of intestate succession or under a will. This section of the Code also provides what this application to be filed by the executor or administrator shall contain. After application is filed with the court, this section then provides:

"The court shall thereupon transmit to the recorder of each county in Ohio where real estate so passing is situated, a certificate of transfer which shall recite * *"

In event there is no administration of an estate, this section authorizes the heirs or devisees to file application with the Probate Court for a certificate of transfer of such inherited or devised real estate.

Section 10509-103, General Code, covers the duties of the county recorder upon the receipt of the certificate of transfer from the Probate Court. It should be noted that the recorder is required to record this certificate in the book provided for the recording of deeds and must index such transfer in the name of the decedent as grantor, and the person or persons to whom the real estate passes as grantee or grantees, in the index provided for the recording of deeds.

Section 10509-104, General Code, provides as follows:

“For recording and indexing such certificate, the recorder shall be paid the fees provided by law for the recording and indexing of deeds, and the probate court be allowed the fees the law provides for similar certificates, which fees of recorder and probate court the judge shall tax and collect as other costs of administering the estate.”

I do not find any requirement in the three sections of the General Code, just referred to, that the certificate of transfer furnished by the Probate Court shall be returned to his office and filed with the other papers in the case.

I am therefore of the opinion that the Probate Court is without authority to require a certificate of transfer issued under authority of Section 10509-102, General Code, to be returned to his court by the county recorder or any other person for the purpose of being filed with the other papers in the case. Such certificate of transfer should be and is, the property of the grantee or grantees therein, whether the transfer is made under the intestate laws of this state or by devise under a will.

I also note that you request my opinion as to whether or not the duty of the Probate Court, under the provisions of Sections 10509-102, 10509-103 and 10509-104, General Code, ceases upon the furnishing of the certificate of transfer to the county recorder, or, is it the duty of the Probate Court to follow such certificate of transfer through the transfer proceedings in the office of the county auditor and through the recording proceedings in the office of the county recorder?

Section 10509-102, General Code, as heretofore stated, provides:

“The court shall thereupon transmit to the recorder of each county in Ohio where real estate so passing is situated, a certificate of transfer.”

There seems to be no further provision requiring him to do anything concerning such certificate of transfer except that under Section

10509-104, supra, the provision is made that the Probate Court shall be allowed the fees the law provides for similar certificates and that the fees of the recorder and the probate court shall be taxed by the judge and collected as other costs in the administration of the estate. Under such provision it would seem that the probate court would be authorized to tax and collect the necessary fees for the proper transfer of the real estate covered in such certificate, from the administrator or executor of such estate. In this connection, however, it should be noted that Section 2778, General Code, provides for the charging and collection of fees by a county recorder for recording mortgages, deeds, powers of attorney, or other instruments of writing, at a specific rate. This section further provides:

“The fees in this section provided shall be paid upon the presentation of the respective instruments for record. * *”

Section 2771, General Code, requires the county recorder, upon the presentation of any instrument of writing for filing or recording, to endorse thereon the fee charged by him for the filing or recording of such instrument, and he is also required to enter such fee so charged, upon the margin of the folio upon which the filing or recording of such instrument is entered. In view of this specific provision, contained in Section 2778, General Code, that the fees to be paid to the county recorder for the recording of deeds of conveyance or other instruments of writing “shall be paid upon the presentation of the respective instruments for record,” I am therefore of the opinion that no duty rests upon the county recorder to file for record, or to record, the certificates of transfer provided under Section 10509-102, General Code, until the necessary fees provided by law are paid by the executor or administrator of the estate or by the grantee or grantees in such conveyance.

The duty, insofar as the probate court is concerned, therefore ends when he transmits to the recorder of each county in Ohio where such real estate so passing is situated, or to the administrator or executor, or to the grantee or grantees in such certificate, or to their agents or attorneys, a proper certificate of transfer for the conveyance of such property.

It should also be noted that Section 2768, General Code, specifically provides that, “the county recorder shall not record any deed of absolute conveyance of land or any conveyance * * until it has been presented to the county auditor, and by him indorsed ‘transferred,’ or ‘transfer not necessary.’” This provision of the Code is specifically applicable to transfers of real estate made under the pro-

visions of Section 10509-102, General Code. Therefore, a special duty rests upon the administrator or executor of such estate or the grantee or grantees therein, or their agents or attorneys, to see that such certificate of transfer is presented to the county auditor, and by him indorsed "transferred," or "transfer not necessary."

In addition to the above, the proper transfer fees are required to be paid to the county auditor at the time such transfer of such real estate is made on the transfer records in his office. All transfer proceedings are to be completed in the county auditor's office before such certificate of transfer is filed in the office of the county recorder for indexing and recording, as hereinbefore provided.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1898.

APPROVAL—BONDS CITY OF CLEVELAND, CUYAHOGA
COUNTY, OHIO, \$9,000.00, PART OF ISSUE DATED
MARCH 1, 1921.

COLUMBUS, OHIO, February 7, 1938.

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

RE: Bonds of City of Cleveland, Cuyahoga County,
Ohio, \$9,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated March 1, 1921. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of September 26, 1935, being Opinion No. 4716.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.