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APPROVAL—ABSTRACT OF TITLE TO LAND IN NORTHFIELD TOWNSHIP, SUMMIT COUNTY, OHIO; DISAPPROVAL, DEED OF L. J. GRAHAM, TRUSTEE OF MUSKINGUM COLLEGE.

COLUMBUS, OHIO, December 21, 1936.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM: You recently submitted for my examination and approval an abstract of title, certain deeds, contract encumbrance record No. 60 and Controlling Board certificate relating to the proposed purchase by the State of Ohio of a tract of land now owned of record by one L. J. Graham, Trustee of The Muskingum College, in trust for the use of The Muskingum College, which tract of land is situated in Northfield Township, Summit County, Ohio, is a part of original Lots 72 and 73 and is described by metes and bounds as follows:

Beginning at a point in the west line of said lot number 73 at the northwest corner of a tract of land in said lot 73 now or formerly owned by John C. Nesbit, and others, which point is 829.63 feet south of the northwest corner of said lot 73; thence north along the west lines of said lots 72 and 73 a distance of about 1336 feet to a point in the west line of said lot 72, said point being also the southwest corner of a tract of land in said lot 72 now or formerly owned by Chauncey C. Peck; thence east along the southerly line of the Peck tract aforesaid a distance of about 1009 feet to a point; thence north along an eastern boundary line of said Peck tract a distance of about 196.50 feet to a point; thence east along the southerly line of said Peck tract a distance of about 565 feet to a point in the center of a public road running through said township; thence southeasterly along the center line of said road a distance of about 492.50 feet to a point; thence north 87 degrees 05' west a distance of about 631 feet to a point; thence south parallel with the west lines of said lots 72 and 73 a distance of about 1088 feet to a point in the north line of the Nesbit tract aforesaid; thence west along the north line of said Nesbit tract a distance of about 1196 feet to the place of beginning, containing 42.72 acres of land, of which 19.94 acres is situated in said lot number 72 and 22.78 acres in said lot number 73, and being the premises conveyed by Irene Clifford, Pearl

Ranney and G. L. Ranney to Maggie Z. Ritchie, the grantor herein, by deed dated January 6, 1893 recorded in the records of deeds in the office of the county recorder of said county, in volume 203, page 39, excepting therefrom certain premises conveyed by said Maggie Z. Ritchie to Elmer W. Saxe by deed dated November 20, 1909, recorded in said records of deeds, in volume 619, page 397, be the same more or less, but subject to all legal highways.

Upon examination of the abstract of title submitted to me, which abstract of title is certified by the abstracter as of November 18, 1936, I find that L. J. Graham, Treasurer of the Muskingum College, owns and holds a good and indefeasible legal title to the above described tract of land in trust for the use of The Muskingum College. I further find from my examination of this abstract of title that said L. J. Graham owns and holds the legal title to said premises free and clear of all liens and encumbrances other than the following which are here stated as exceptions to the legal title in and by which he owns and holds this tract of land:

1. Taxes on this property for years prior to the year 1935, amounting to the sum of \$410.55, are unpaid and delinquent and are a lien upon this property. It further appears that the taxes on this property for the first half of the year 1935 are unpaid and that such taxes, amounting to the sum of \$19.38, together with a ten per cent penalty on this delinquency, amounting to \$1.94, are a lien upon the property. It likewise appears that the taxes for the last half of the year 1935, amounting to the sum of \$19.38, are unpaid and these taxes, together with an accrued penalty of \$1.94, are a lien upon the property. In addition to this, the taxes on this property for the year 1936, the amount of which was not determined at the time of the certification of this abstract, are a lien on the property.

2. On February 10, 1935, one Maggie Z. Ritchie, who then owned and held the above described tract of land, executed an instrument in due form of law in and by which she granted to The East Ohio Gas Company the right to lay, maintain and operate a pipe line for the transportation of oil or gas in, upon and through said land; and by this instrument there was granted to said The East Ohio Gas Company the further right to lay down additional lines of pipe along the first line which it had the right to lay down and maintain in and upon these premises. There is nothing in the abstract of title to show what, if anything, was done by The East Ohio Gas Company pursuant to the rights granted to it under this instrument. If, as a matter of fact, a pipe line or pipe lines have been constructed in and upon this tract of land, you or the engineer of your department will doubtless be in position to know whether such pipe lines

will interfere in any way with the use that you desire to make of these lands. In any event, however, this instrument and the easement thereby granted to The East Ohio Gas Company for the purpose above stated is an encumbrance upon the property.

As a part of the files relating to the purchase of the above described property, there have been submitted to me for examination and approval a warranty deed executed by L. J. Graham and a quit claim deed executed by The Muskingum College in and by which deeds the above described tract of land is respectively conveyed and remised and released to the State of Ohio. Upon examination of the warranty deed tendered by L. J. Graham, I find that I am required to disapprove this deed specifically for the reason that the same does not recite the true consideration for the conveyance of this land to the State of Ohio. The consideration recited in said deed is the sum of \$10.00. Consistent with the requirements of this office and with those of the Auditor of State the true consideration, to wit, the sum of \$8,000.00, should appear in this deed as the consideration paid by the State of Ohio for this land.

In the examination of this deed, it is noted that the same has been signed and acknowledged by Eldora Graham, wife of L. J. Graham. Inasmuch as in legal contemplation, L. J. Graham owns and holds the legal title to this property as a trustee for the benefit of The Muskingum College, there may be some question as to whether it was necessary for Eldora Graham to sign this deed and to release her dower therein. However, inasmuch as she has signed and acknowledged this deed, it is suggested that the clause in the deed providing for the release of dower be filled by typewriting therein the effective words releasing Eldora Graham's right and expectancy of dower in the premises. In addition to this, this deed should be corrected in the conveyance clause in the habendum and elsewhere in the deed as to show that this conveyance is to the State of Ohio, the grantee, and to its "successors and assigns" instead of heirs and assigns as the same now appear in the deed.

The quit claim deed executed by The Muskingum College, a corporation, has been properly executed by said corporation by the hand of its President and Acting Secretary, and the same has been duly acknowledged by these officials of the corporation in the manner required by law and the form of this deed is such that the same is legally sufficient to convey to the State of Ohio all of the right, title and interest which The Muskingum College has in and to the above described tract of land. Inasmuch, however, as the title and interest which The Muskingum College owns and holds in this land is only an equitable title, the transaction for the purchase of this land should not be closed by the issuance of voucher and warrant covering the purchase price of the property until a proper deed executed by L. J. Graham, as owner of the legal title, is delivered to the State through your department.

Upon examination of contract encumbrance record No. 60, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance in the appropriation account to the credit of your department, to pay the purchase price of this property, which is the sum of \$8,000.00. It further appears, in this connection, by way of recital in said contract encumbrance record, as well as by the certificate of the President of the Controlling Board, that said Board has approved the purchase of this property and has released from the appropriation account a sufficient amount of money to cover the purchase price of this property.

By reason of the peculiar circumstances under which this property is now owned and held, it is thought proper, by way of precaution, to speak of another matter which may possibly be of importance as affecting the title to this property. It does not appear from the abstract of title that there are any outstanding leases upon the above described tract of land or on any part thereof. And I assume from this fact that this land is in the actual possession of L. J. Graham, Treasurer of Muskingum College, or of the college itself and that the property is being used by them. It should be noted in this connection, however, that if, as a matter of fact, this property or any part thereof is in the actual physical possession of any person or persons other than said L. J. Graham and other than Muskingum College under claim of right, the state of Ohio, as the purchaser of this property, and your department, as the agent of the state in such purchase, will be bound to take notice of whatever rights such person or persons may have in this land as against L. J. Graham and Muskingum College. It may be presumed, however, as to this, that you or your representatives in the purchase of this land know the facts in regard to this matter or may upon investigation be advised of the same.

I am herewith returning for your further consideration said abstract of title, the warranty deed of L. J. Graham, the quit claim deed of Muskingum College, contract encumbrance record No. 60 and the Controlling Board certificate above referred to.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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APPROVAL—BONDS OF GARFIELD HEIGHTS VILLAGE  
SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$8,000.00.

COLUMBUS, OHIO, December 21, 1936.

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