

538.

APPROVAL—BONDS OF MEDINA COUNTY, OHIO, \$20,000.00.

COLUMBUS, OHIO, April 28, 1937.

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

GENTLEMEN:

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

The above purchase of bonds appears to be part of an issue of bonds of the above county dated August 1, 1926. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of December 9, 1926, being Opinion No. 3874.

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

Respectfully,

HERBERT S. DUFFY,
Attorney General.

539.

APPROVAL—WARANTY DEED, ABSTRACT OF TITLE, AND CONTRACT ENCUMBRANCE RECORD FOR LAND PURCHASED FROM ETTA C. HENSON AND ORLAN A. HENSON, JOHNSON TOWNSHIP, CHAMPAIGN COUNTY, OHIO.

COLUMBUS, OHIO, April 28, 1937.

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

DEAR SIR: You have submitted for my examination and approval an abstract of title, certain deeds, contract encumbrance record No. 18 and other files relating to the proposed purchase of a tract of land formerly owned of record by Etta C. Henson and Orlan A. Henson in Johnson Township, Champaign County, Ohio, and which is more particularly described as follows:

Beginning at a concrete monument which is N. 1 deg, 22' W. 692.02 feet from the common corner of O. A. & E. C. Henson, E. & L. A. Foust and George R. Kiser farms which

is the SE corner of the S E $\frac{1}{4}$ of Section 22 in Johnson Township, Champaign County, Ohio, T. 3 E., R. 12 N.; thence N. 90 deg. W. 980.0 feet to a concrete monument; thence N. 31 deg. 21' W., 455.89 feet to a concrete monument; thence N. 90 deg. W., 835.0 feet to a concrete monument; thence N. 5 deg. 32' E., 1392.00 feet to the center line of Mosquito Creek, this point being the common corner of Hallet L. Hunt, O. A. and E. C. Henson and George R. Kiser farms; thence with the center line of the creek S. 62 deg. 33' E., 362.43 feet; thence with the center line of the creek S. 75 deg. 06' E., 1175.00 feet; thence with the center line of the creek S. 75 deg. 58' E., 444.56 feet; thence S. 1 deg. 22' E., 1200.00 feet to the place of beginning containing 58.18 acres, more or less. This tract is the north part of the land deeded to Orlan A. Henson and Etta Henson by H. S. Drumm and V. L. Drumm and recorded in Deed Book No. 118, Page No. 622, Champaign County Recorders Office.

Upon examination of the abstract of title submitted to me, which abstract is certified by the abstracter under date of April 17, 1937, I find that at the time of the death of Orlan A. Henson, which was some time prior to February 27, 1937, said Orlan A. Henson and Etta C. Henson, his wife, as tenants in common owned and held an indefeasible fee simple title to the above described tract of land and that they owned and held this property free and clear of all encumbrances except current taxes and except a mortgage upon the above described and other premises in the amount of \$1300.00 which said Orlan A. Henson and Etta C. Henson, his wife, executed to one Harry Kline under date of July 23, 1932, and which at the time of the death of said Orlan A. Henson was owned and held by one Lydia F. Kline, as administratrix of the estate of Harry Kline, then deceased.

Upon the death of Orlan A. Henson, his undivided one-half interest in this property descended to and became vested in his three sons, McKinley Henson, Clarence Henson and Maurice Henson, subject to the inchoate dower interest therein of his widow, Etta C. Henson.

At the time of the death of Orlan A. Henson he was a resident of Clark County, Ohio, in which county a part of the real estate owned by him at the time of his death was located and in which county administration of his estate was granted. On February 27, 1937, Etta C. Henson, as administratrix of the estate of Orlan A. Henson, filed an action in the Probate Court of Clark County to sell the real estate of Orlan A. Henson to pay the debts of his estate, a part of which real estate was located in Clark County and a part of which, including that hereinabove

described, was and is in Champaign County. The parties defendant in this proceeding in the Probate Court of Clark County were McKinley Henson, Clarence Henson, Maurice Henson, heirs at law of Orlan A. Henson, deceased, Etta C. Henson, his surviving spouse, and Lydia Kline and the Springfield Federal Savings and Loan Association. Lydia Kline, as above noted, owned and held a mortgage on the above described and other premises in Johnson Township, Champaign County, Ohio, which it appears at the time of this proceeding had been reduced by payments to the sum of \$300.00. The Springfield Federal Loan and Savings Association, it appears, held the mortgage upon certain real property in the city of Springfield which was likewise included in the petition filed by the administratrix.

The first property described by the administratrix in her petition to sell the property of the deceased for the payment of debts was the undivided interest of the deceased in the property above described, the other undivided one-half interest in which was owned by Etta S. Henson individually.

Pursuant to this proceeding in the Probate Court of Clark County undivided one-half interest in the above described tract of land was sold and pursuant to the order of the court therein made, Orlan A. Henson's to the State of Ohio, which sale upon confirmation thereof by the court was followed by the execution of a deed by said Etta C. Henson, as administratrix of the estate of Orlan A. Henson, deceased, conveying to the State of Ohio the undivided one-half interest of said decedent in and to the tract of land above described and with this deed Etta C. Henson has tendered to the State of Ohio a warranty deed in and by which she conveys to the State her own undivided one-half interest in this same tract of land. Both of these deeds have been properly executed and acknowledged and taken together they are legally sufficient to convey to the State of Ohio the above described tract of land with a covenant of warranty, contained only in the individual deed of Etta C. Henson, that the premises conveyed are free and clear of all encumbrances whatsoever.

The court, upon confirmation of the sale of this property, directed the payment of the mortgage of Lydia Kline out of the proceeds of the sale of the premises here in question and of contiguous lands theretofore owned by the Hensons which were likewise included in this proceeding; and with respect to said mortgage the court further ordered and directed that the release and satisfaction of the same be entered of record in the office of the County Auditor of Champaign County, where said property is located. In this situation, we need not concern ourselves any further with the Lydia Kline mortgage. However, it is noted that the taxes on the above described property and on a large tract of land of which the

same is a part for the last half of the year 1936, amounting to the sum of \$13.67, are unpaid and are a lien upon the property as are, likewise, the undetermined taxes on the property for the year 1937. In addition to this, it is noted that there is nothing in the abstract with respect to the determination of the inheritance taxes, if any, upon the successions to the estate of Orlan A. Henson at the time of his death. It appears quite unlikely that the value of these successions was such as to require the payment of inheritance taxes thereon. However, this is a matter which should be determined by some representative of your office before the transaction for the purchase of this property is closed.

As above indicated, the warranty deed tendered by Etta C. Henson, individually, and the deed tendered by Etta C. Henson, as administratrix of the estate of Orlan A. Henson, deceased, have been properly executed and acknowledged and said deeds are accordingly hereby approved by me as is the title of the property thereby conveyed to the State, subject only to the exceptions above noted with respect to the general taxes on the property for the last half of the year 1936 and for the year 1937 and subject, further, to the possibility that there may be inheritance taxes arising by reason of the death of Orlan A. Henson which may become a lien upon the property.

The contract encumbrance record, which has been submitted to me, has been executed in proper form by the Director of Finance and by the other officials whose names are signed thereon. And the same shows a sufficient balance, otherwise unencumbered, to pay the purchase price of this property amounting to the sum of \$3078.50. In this connection, it is noted, however, that the contract encumbrance record is made out in the name of Orlan A. and Etta C. Henson. Inasmuch as the vouchers covering the purchase price of this property will necessarily be made payable to Etta C. Henson and to Etta C. Henson, as administratrix of the estate of Orlan A. Henson, deceased, in the amount of \$1539.25 each, it may be that as a practical matter you will have to correct this contract encumbrance record in order to clear the vouchers through the office of the Auditor of State. However, this is a matter which can be adjusted, if necessary, by and between your department and said office.

It appears by way of recital in contract encumbrance record No. 18, above referred to, and also by a copy of a certificate of the Controlling Board submitted to me that said Board has approved the purchase of this property as a part of the Kiser Lake Project.

In this connection, it is further noted that the purchase of this property was authorized and provided for by the Conservation Council for the purpose above stated by resolution of this body under date of June 24, 1936. In taking this action the Conservation Council acted under the authority of Section 472, General Code, which, among other

things, authorizes the Conservation Council to acquire lands for park and reservoir purposes, subject to the approval of the Attorney General. Inasmuch as no reason is seen why the purchase of this property by the Conservation Council for and in the name of the State of Ohio should not be approved by me, I am accordingly approving the purchase and acquisition of this property as is evidenced by my approval endorsed upon the deeds above referred to.

I am herewith returning to you said abstract of title, the warranty deed of Etta C. Henson, the deed of Etta C. Henson, as administratrix of the estate of her deceased husband, Orlan A. Henson, contract encumbrance record No. 18 and other files relating to the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

540.

COUNTY ENGINEER—ROAD REPAIRS—FORCE ACCOUNT—
EXCEPTION TO GENERAL STATUTES—EMERGENCY
REPAIRS—APPROPRIATION BY COUNTY COMMISSIONERS—
SALARY—ROAD SUPERINTENDENT.

SYLLABUS:

1. *Section 2792-1, General Code, authorizing the county engineer to undertake certain road repairs by force account as emergency repairs, total cost of which is not more than \$200.00, is an exception to the general statutes placing control of county highways in the board of county commissioners.*

2. *Section 2792-1, General Code, authorizes the purchase of materials and the employment of labor by the county engineer for the making of emergency repairs, the total cost of which is not more than \$200.00 in any one instance.*

3. *It is not necessary when the county engineer determines the same to be an emergency repair and needing immediate attention, in the exercise of his sound discretion, that he prepare plans, specifications, estimates of cost or forms of contract, but he may make such repairs by force account.*

4. *Payments for emergency repairs by the county engineer are made by authority of the county engineer from the fund appropriated*