

3041.

APPROVAL, ABSTRACT OF TITLE TO LAND OF JACOB Y. DYKE AND
E. B. HATFIELD IN FRANKLIN TOWNSHIP, ROSS COUNTY, OHIO.

COLUMBUS, Ohio, December 20, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your communication under date of December 11, 1928, which reads as follows:

"May I call your attention to Opinion of the Attorney General No. 2622, which refers to an examination of the abstract presented with the proposed purchase of land in Ross County from J. Y. Dyke and E. B. Hatfield? In this opinion the same point is raised relative to a deed for a part of this land which was executed in the State of Indiana as was raised in Opinion No. 2618 (Cunningham purchase).

In the last paragraph of Opinion No. 2618, the Board of Control was given an opportunity to assume responsibility for going ahead with this purchase on the ground that any question being raised with respect to the effect of that deed was very remote and that the state would be taking little chance in accepting and paying for the property in question.

The Board of Control feels that the same situation exists in the Hatfield-Dyke purchase, and requests if possible that the Attorney General either amend Opinion No. 2622, or offer a supplementary statement which will permit the Board of Control to proceed with closing the purchase."

Opinion No. 2622 of this department, referred to in your communication, related to an abstract of title to two tracts of land in Franklin Township, Ross County, Ohio, of which Jacob Y. Dyke and E. B. Hatfield are the owners of record. As pointed out in said former opinion of this department, the deed whereby said Jacob Y. Dyke and E. B. Hatfield obtained title to one of said tracts of land was a deed executed by one Elmer E. March and Josephine March, his wife, in Vigo County, Indiana. This deed was executed March 26, 1924, and did not contain any words of perpetuity such as at that time were necessary under the laws of Ohio to convey a fee simple title to lands in this state. By reason of this circumstance, the question was made in said opinion, on considerations more fully discussed in Opinion No. 2618 of this department, relating to the Cunningham abstract, whether the deed executed by Elmer E. Marsh and wife was effective to convey anything more than a life estate in said tract of land to said Jacob Y. Dyke and E. B. Hatfield.

However, as in the case of the deed to Cunningham, discussed in Opinion No. 2618, referred to in your communication, the deed here in question was one executed in the state of Indiana and in a form sufficient under the laws of said state to convey a fee simple title to lands in that state. This fact is indicative of an intention on the part of said Elmer E. Marsh, and wife, to convey to Jacob Y. Dyke and E. B. Hatfield all the right, title and interest that they had in said tract of

land: and, as observed by me in the opinion relating to the deed to Cunningham, the possibility of any question with respect to the deed here in question being raised by said Elmer E. Marsh and wife, or by any one claiming under them, is so remote that the state would probably be taking little chance in accepting and paying for the property here in question. As in the case of the Cunningham property, however, I feel that this is a matter which should be determined by your department, and that this office should not take upon itself any responsibility other than to advise you as to the legal questions involved in the transaction relating to the proposed purchase of this land.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3042.

APPROVAL, ABSTRACT OF TITLE TO LAND OF CLAIR H. HAUN, IN
NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, December 20, 1928.

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

DEAR SIR:—You have submitted a corrected abstract requesting my opinion as to the status of the title of two separate tracts of land, one of 50 acres and the other of 354.37 acres in Nile Township, Scioto County, Ohio, as disclosed by said corrected abstract.

This abstract was under consideration by me in my opinion No. 2769 issued October 24, 1928. In said opinion it was pointed out that Clair H. Haun is the owner of record of both of said tracts, subject to three objections therein specifically pointed out. The corrected abstract by affidavit disposes of the first objection relative to the status of certain oil and gas leases. Furthermore, said corrected abstract now eliminates objection No. 2 as set forth in said opinion.

The third objection therein noted was with reference to the taxes for the year 1928, which are unpaid and a lien. Inasmuch as the deed warrants the title to be free from encumbrances, it will be the duty of the State to require said taxes to be paid before the acceptance of the deed and the delivery of the warrant in payment therefor, or the amount of said taxes if determined may be deducted from the purchase price.

As stated in said former opinion, the deed submitted is executed in proper form and sufficient to convey said premises to the State when properly delivered. Also, as mentioned in said former opinion, a proper certificate of the Director of Finance as to the existence of unencumbered funds legally appropriated for said purpose has been submitted. Also a copy of the minutes of the Controlling Board indicating their consent to said purchase.

Enclosed herewith you will find said abstract, deed, encumbrance estimate, and other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.