

Architect; Letter from Auditor of State, showing all necessary papers and documents are on file in his office.

Finding said contract in proper legal form, I have noted my approval thereon, and same is transmitted to you herewith, together with all papers submitted in this connection.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

621.

ABSTRACT OF TITLE, DEED, ETC.—PROPOSED PURCHASE
BY STATE FROM ELIZABETH ROHN, DESIGNATED
LAND, GREEN TOWNSHIP, SUMMIT COUNTY, NIMISILA
CREEK RESERVOIR BASIN PROJECT.

COLUMBUS, OHIO, May 22, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certificate of title, warranty deed and contract encumbrance record No. 45, relating to the proposed purchase by your department for and in the name of the State of Ohio of a tract of land which is owned of record by one Elizabeth Rohn in Green Township, Summit County, Ohio, which is a part of the southwest quarter of Section No. 20 of said township and county and which, together with the accompanying easement over a marginal strip of land adjoining the waters of Nimisila Reservoir, is more particularly described as follows:

Beginning at the southwest corner of Section No. 20, thence along the west line of Section No. 20 and the east line of Lands belonging to the State of Ohio N 6° 55' 45" E. Eleven Hundred Ninety-six and Seventy Hundredths (1196.70) feet to a point and the true place of beginning of the description of the property to be conveyed; thence S. 84° 19' 31" E. Eight Hundred Fifty-four and No Hundredths (854.00) feet to a point; thence N 10° 52' 17" W nine hundred ninety-three and eighty-eight hundredths (993.88) feet to a stake; thence N 84° 19' 31" W two hundred forty and no hundredths (240.00) feet to a point; thence S 61° 36' 03" W three hundred eighty and no hundredths (380.00) feet to a point in the west line of section No. 20 and the east line of property of the State of Ohio; thence along the west line of Section No. 20 and the east line of the property

belonging to the State of Ohio S 6° 55' 45" W seven hundred forty and no hundredths (740.00) feet to the true place of beginning and containing fourteen and sixty hundredths (14.60) acres of land, as surveyed by Francis W. Stafford, September, 1936.

Also conveying easement or right of flowage over a marginal strip of land adjoining the waters of Nimisila Reservoir over, along and between the spillway crest elevation of 1,000 feet and elevation 1005 feet, above mean sea level and as further described as being along the north and the east and south boundaries of the above described parcel and on the east short line of Nimisila Reservoir.

Upon examination of the certificate of title submitted to me, which certificate of title is executed by The Northern Ohio Guarantee Title Company under date of May 16, 1939, I find that said Elizabeth Rohn has a good and indefeasible fee simple title to the above described property and that she owns and holds the same free and clear of all encumbrances except the following which are here noted as the only exceptions to the title in and by which said Elizabeth Rohn now owns and holds this property:

1. On June 26, 1924, Adam Rohn and said Elizabeth Rohn executed a mortgage to the Kentucky Joint Stock Land Bank of Lexington, Kentucky, to secure payment of a promissory note of even date therewith in the sum of \$2,000.00, with interest thereon at six per cent per annum. This mortgage has not been canceled of record and the same is a lien upon the above described tract of land as a part of the larger tract of land then owned by said mortgagors which was set out and described in the mortgage deed, to the extent of the amount remaining unpaid on the promissory note secured by this mortgage, together with interest thereon. Provision should be made for the payment and satisfaction of this mortgage or for the release of the above described tract of land including that covered by said easement aforesaid, from the operation of the same, before the transaction for the purchase of this property is closed by the issue of voucher and warrant covering the purchase price of the property.

2. On September 18, 1918, Elizabeth Rohn and Adam Rohn executed an instrument in deed form in and by which they conveyed to The Northern Ohio Traction and Light Company an easement for a right-of-way on and over a sixty-eight-acre tract of land, which included the smaller tract of land above described, for the construction and maintenance thereon of an electric transmission line or lines with all necessary appliances for the purpose of transmitting, distributing and using electricity on and over said premises.

3. On September 27, 1934, Adam Rohn and Elizabeth Rohn executed an oil and gas lease to the East Ohio Gas Company in and by which the larger tract of land above referred to, including that here under investigation, was leased and demised to said company for oil and gas purposes. This lease, which is one for a term of six years and for so much longer as oil or gas or their constituents are found in paying quantities on said premises, has not been canceled or released of record and the same stands as an encumbrance upon the property.

4. On June 25, 1938, Adam Rohn and Elizabeth Rohn executed an instrument in deed form to the State of Ohio in and by which they granted to the State of Ohio an easement for a right-of-way for the relocation of a pipe line and of a telegraph or telephone line over certain lands owned by said grantors, including that here under investigation.

5. On October 31, 1938, apparently after the death of said Adam Rohn, Elizabeth Rohn, Adam P. Rohn, Jr., Eva Rohn and Andrew Rohn executed an instrument in deed form to the Board of County Commissioners of Summit County, Ohio, in and by which they conveyed to said county a perpetual easement for highway right-of-way purposes on and over a twenty-foot strip of land which is described in said deed as follows:

Beginning at a point in the center line of Clinton-Greensburg Road and Section line between Lots 19 and 20, Station 153 plus 81; thence northerly 30 feet to the northerly property or right of way line, the true place of beginning; thence continuing northerly 20 feet along the said section line to a point; thence easterly and parallel to the said center line of Clinton-Greensburg Road, a distance of 719 feet to a point, said point being opposite Station 160 plus 50; thence southerly 20 feet to a point in the northerly right of way line; thence westerly along the northerly right of way line 719 feet to the place of beginning.

Beginning at a point in the center line of Clinton-Greensburg Road, at Station 164 plus 00; thence northerly 30 feet to the right of way, the true place of beginning; thence continuing northerly 10 feet to a point; thence easterly and parallel to the said center line of Clinton-Greensburg Road a distance of 200 feet to a point; thence southerly 10 feet to a point; said point being in the northerly right of way line; thence westerly along the northerly right of way line 200 feet to the place of beginning.

Although the encumbrances above noted as exceptions 2 to 5, inclusive, have not been canceled or released and the same affect the record title to the tract of land here under investigation, I am not advised by the certificate of title or by any other information at hand as to the extent, if at all, the use of the above described lands which are to be conveyed to the State of Ohio in fee simple and/or by way of easement, will be

affected by these encumbrances of the existence of which you and your engineers in charge are doubtless familiar.

In addition to the liens and encumbrances above noted, it appears that the taxes for the last half of the year 1938 on the 68.86-acre tract of land, of which the above described property is a part, amounting to the sum of \$20.85, are unpaid and are a lien upon all of the property included in such larger tract. And it likewise appears that the undetermined taxes for the year 1939 on this larger tract of 68.86 acres are a lien upon such larger tract of land including that here under investigation. Provision should be made for the segregation by the County Auditor of these taxes with respect to the property to be conveyed to the State in fee simple or by easement and arrangements should be made for the payment and the satisfaction of such taxes before the transaction for the purchase of this property is closed.

Upon examination of the warranty deed tendered by Elizabeth Rohn, I find that said deed has been properly executed and acknowledged by said grantor and that the form of this deed is such that the same is legally effective to convey to the State of Ohio by fee simple title the 14.60-acre tract of land described in the first paragraph of the description of the property in this deed; and the same will be effective to convey an easement over the marginal strip of land adjoining the waters of Nimisila Reservoir described in the second paragraph contained in the description of this property as the same is set out in said deed.

An examination of contract encumbrance record No. 45, which has been submitted as a part of the files relating to the purchase of this property, shows that the same has been properly executed and that there is a sufficient balance in the appropriation account to the credit of the Department of Public Works for the acquisition of lands in connection with the Nimisila Creek Reservoir Basin Project, which have been encumbered for this purpose, to pay the purchase price of the above described property, which purchase price is the sum of \$2000.00. Inasmuch, however, as since the execution and approval of this contract encumbrance record the title to the property here under investigation has been conveyed by the administrator of the state of Adam Rohn to Elizabeth Rohn, it is submitted that said contract encumbrance record should be corrected so as to indicate the payment of the purchase price of this property in the amount above stated to Elizabeth Rohn instead of to the administrator of the estate of Adam Rohn, as therein now indicated. And it further appears in this connection that the purchase of this property has been approved by the Controlling Board pursuant to the authority conferred upon said Board by law.

Subject to the exceptions above noted as to the title of said Elizabeth Rohn, her title in and to the above described property is hereby approved as is the warranty deed tendered by said grantor. And subject only to the suggested correction in the contract encumbrance record, above noted,

said contract encumbrance record is likewise approved. All of these files are herewith returned to you for your further attention in closing the transaction for the purchase of this property.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

622.

APPROVAL—PROPOSED FORM OF DEED—CONVEYANCE
BY STATE, CERTAIN HIGHWAY RIGHT OF WAY—GAL-
LIPOLIS DAM—WAR DEPARTMENT, U. S.

COLUMBUS, OHIO, May 22, 1939.

HON. ROBERT S. BEIGHTLER, *Director of Highways, State Highway De-
partment of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted in duplicate a proposed form of deed conveying the rights of the State of Ohio in certain highway right-of-way affected by the pool stage of the recently constructed Gallipolis Dam.

You also enclose an affidavit of the Director of Highways as to the sufficiency of the title to be conveyed and it is requested that said papers be examined and if found satisfactory, my approval thereof on the form provided by the War Department be made.

I have examined the instruments submitted and they appear to be in accord with a former opinion of this department, wherein I approved the proposal that was submitted by the Director of Highways to the War Department to convey the rights in the premises described for the sum of \$129,079.00, with interest thereon at six per cent per annum from April 19, 1939.

Finding said instruments in proper legal form, I have accordingly signed in duplicate an opinion to the effect that an examination has been made of the affidavit of Robert S. Beightler, Director of Highways, and supporting papers in connection with the matter under consideration and to the effect that in my opinion the State of Ohio became vested of the right of way easement for highway purposes in the manner as stated in the affidavit referred to over the eight tracts of land more particularly described in the deeds of conveyance submitted.

I also, in accordance with the above opinion, have endorsed my approval upon the instruments of conveyance submitted.

There is being transmitted herewith said instruments submitted by you and above referred to.

Respectfully,

THOMAS J. HERBERT,
Attorney General.