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APPROVAL—BONDS OF CITY OF LAKEWOOD, CUYAHOGA
COUNTY, OHIO, \$51,000.00.

COLUMBUS, OHIO, June 24, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of Lakewood, Cuyahoga County, Ohio,
\$51,000.00.

I have examined the transcripts of proceedings relative to the above bonds purchased by you. These bonds comprise part of four issues of bonds of the above city dated July 1, 1926, and bearing interest at the rate of 4½% per annum, as follows: (1) City portion sewer street improvement in an aggregate of \$35,000 of an authorized \$67,000; (2) city portion water street improvement in an aggregate of \$32,000 of an authorized \$67,000; (3) street opening in the aggregate amount of \$50,000, and (4) Edgewater sewer main in an aggregate of \$260,000 of an authorized aggregate of \$500,000.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

782.

DISAPPROVAL—ABSTRACT OF TITLE, WARRANTY DEED,
AND CONTRACT ENCUMBRANCE RECORD RELATING
TO THE PROPOSED PURCHASE OF LAND IN NILE
TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, June 24, 1937.

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

DEAR SIR: This is to acknowledge the receipt of your recent com-

munication with which you submit for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 49 and other files relating to the proposed purchase of a tract of land of 78.19 acres which apparently stands of record in the name of Rose R. Lundstrom and Charles T. Lundstrom in Nile Township, Scioto County, Ohio. This tract of land is a part of O.S.U. Lot No. 4 in said township and county and is more particularly described by metes and bounds in the deed above referred to.

Upon examination of the abstract of title, I find that the title to this tract of land passed by mesne conveyances from Ohio State University, which owned originally the whole of said Lot No. 4 containing 158 acres and including the tract of land here in question, to one Oliver Piatt who obtained title to this tract of land by deed from one John Piatt under date of September 1, 1895. Oliver Piatt died intestate some time in the month of September, 1910, and, it appearing that he left no widow surviving him, the title to this property passed by descent to his three children and heirs at law, Philip H. S. Piatt, Inez Piatt and Blanch M. Golden, who thereupon owned and held this land as tenants in common, each having an undivided one-third interest therein. Some time in the month of May, 1913, said Inez Piatt died intestate and thereupon her undivided one-third estate and interest in the property passed by descent in equal moieties to her surviving brother and sister, Philip H. S. Piatt and Blanch M. Golden, who then each had an undivided one-half interest in the property.

On May 16, 1914, Philip H. S. Piatt, then unmarried, executed a deed to his sister, Blanch M. Golden, and by this deed conveyed to said grantee an *undivided one-third interest* in this tract of land. Thereafter, Blanch M. Golden, her husband, Floyd Golden, joining with her in the conveyance, conveyed this property to one T. A. Henson, in and by which deed she apparently assumed to convey to said grantee the whole fee simple title to the property. And thereafter on April 13, 1926, T. A. Henson conveyed this property to Rose R. Lundstrom and Charles T. Lundstrom in a deed in and by which it was likewise apparently intended to convey to said grantees the whole outstanding estate and interest in this property.

Although, as above noted, T. A. Henson and Rose R. and Charles T. Lundstrom, as successors in interest of Blanch M. Golden, assumed to own and hold the whole of the fee simple estate and interest in this property by reason of the respective deeds to them, above referred to, it is obvious that neither T. A. Henson in the first instance nor the Lundstroms in the second, had by reason of the respective deeds executed to them, any greater legal estate and interest in the property than that which Blanch M. Golden could convey. As to this, it appears that although

Philip H. S. Piatt at the time of the execution of his deed to his sister, Blanch M. Golden, had an undivided one-half interest in this property which he could have conveyed to said Blanch M. Golden and which, probably, he intended to convey to her, the fact is that he conveyed to her by this deed only an undivided one-third interest in the property leaving remaining in him, said Philip H. S. Piatt, an undivided one-sixth interest in the property. In other words, after this deed of conveyance to Blanch M. Golden, she and her brother were still tenants in common in this property, with interest therein of five-sixths and one-sixth, respectively. And, thereafter, T. A. Henson and the Lundstroms, respectively, by the several deeds executed to them, became tenants in common with said Philip H. S. Piatt in the legal title to this property. And so far as I am advised by the abstract of title or any information therein contained, said Philip H. S. Piatt, as a tenant in common with the Lundstroms, still has an undivided one-sixth interest in this property which is not covered by the deed which has been tendered by the Lundstroms to the State of Ohio.

In this connection, as may be inferred from what I have said above, there is nothing in the abstract of title to show that the estate and interest of Philip H. S. Piatt in and to this property has in any wise been barred by adverse possession of the Lundstroms or by their predecessors in title. Although they undoubtedly hold possession of the whole of this tract of land, it is to be recognized that the occupation by a tenant in common of the common estate or property is ordinarily not adverse to the co-tenant. The presumption, on the contrary, is that such occupancy by one co-tenant is with full recognition of the rights of the other co-tenant and is on his behalf as well as for the tenant who occupies the land. And this will continue to be the situation until the occupying tenant deals with the property in such way as to bring to the attention of the other co-tenant notice that the occupying tenant in possession is claiming the entire estate and interest in the property, at which time adverse possession of the property as against the other tenant may be said to begin; and if such adverse possession is continued for a sufficient length of time, the same may give the occupying tenant the whole legal title, estate and interest in the property as against such other tenant.

However, as before stated, there is nothing in the information before me which indicates any adverse possession of this property by the Lundstroms or their predecessors in title as against the undivided estate and interest of Philip H. S. Piatt in this property. In this situation, I do not feel that I can do otherwise than to disapprove the title of Rose R. Lundstrom and Charles T. Lundstrom in and to this property. You are accordingly advised not to purchase the property here in question until the apparent title of Philip H. S. Piatt in and to this property is cleared

in some way either by requiring the Lundstroms to obtain from him a quit claim deed to the property or by having their title to the property quieted by a proper proceeding in a court of competent jurisdiction for this purpose.

For the reason above stated, in the title to this property now standing of record in Rose R. Lundstrom and Charles T. Lundstrom, is disapproved and I am herewith returning to you said abstract of title, warranty deed, contract encumbrance record No. 49 and other files relating to the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

783.

APPROVAL—BONDS OF MCKEAN RURAL SCHOOL DISTRICT,
LICKING COUNTY, OHIO, \$4,000.00 (Unlimited)

COLUMBUS, OHIO, June 24, 1937.

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

GENTLEMEN:

RE: Bonds of McKean Rural School Dist., Licking County,
Ohio, \$4,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of building bonds dated June 1, 1937, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.