

141.

DISAPPROVAL—ABSTRACT OF TITLE TO LAND IN JOHNSON TOWNSHIP, CHAMPAIGN COUNTY, OHIO.

COLUMBUS, OHIO, February 17, 1937.

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

DEAR SIR: You recently submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 22 and other files relating to the proposed purchase by the Conservation Council of a tract of land owned of record by Floyd Frank and Rebekah Frank in Johnson Township, Champaign County, Ohio, and which is more particularly described as follows:

Beginning at a point in the geographic center of Section 22, said point being in the Northeast corner of the Southwest quarter of Section 22, Johnson Township, Champaign County, Ohio, Town 3 East, Range 12 North; thence running South $1^{\circ} 28'$ East, along the property line between the grantor and Hallet L. Hunt, et al., a distance of 1339.69 feet to a point in a concrete monument; said point being in the common corner between the F. and R. Frank, Hallet Hunt and W. F. and F. E. Pence farms; thence South $89^{\circ} 58'$ West, along the property line between the grantor and W. F. and F. E. Pence, a distance of 310 feet, more or less, to a point in a concrete monument; thence North $31^{\circ} 05'$ West, a distance of 669.38 feet, to a point in a concrete monument; thence North $64^{\circ} 04'$ West, a distance of 1756.19 feet, to a point in a concrete monument; said point being in the common corner between the F. and R. Frank, Mary E. Wilson and Joseph W. Licklider farms; thence North $89^{\circ} 58'$ East, along the property line between the grantor and Joseph W. Licklider, a distance of 2180 feet, more or less, to the place of beginning, and containing 31 acres, more or less. The above described tract of land is the northeast part of an eighty (80) tract of land conveyed to the grantor from William and Rebecca Ward, as recorded in Vol. 90, Page 382, of the Deed Records in the Champaign County Recorders' office. As per new survey made by the Ohio Department of Conservation.

Upon examination of the abstract of title submitted to me, which abstract is certified by the abstracter as of February 10, 1937, I find that Floyd Frank and Rebekah Frank, as tenants in common, have a

good and indefeasible fee simple title to this property and that they own and hold the same free and clear of all encumbrances except the following liens and adverse interest which are here noted as exceptions to the title in and by which this property is now owned and held:

1. It appears from the abstract that the taxes on this property and upon a larger tract of 76 acres of which the lands here in question are a part, amounting to the sum of \$38.82, are unpaid and are a lien upon the property. Inasmuch, as is hereinafter noted, as this property is to be conveyed to the State of Ohio free and clear of all encumbrances whatsoever, Floyd Frank and Rebekah Frank, the present owners and holders of this property, should either pay the whole amount of the taxes above stated upon the 76-acre tract of land or obtain a segregation of such taxes with respect to the 31-acre tract of land here in question and pay the taxes upon this tract before the transaction for the purchase of this property is closed by your department.

2. On April 14, 1936, Floyd Frank and Rebekah Frank executed and delivered to the Farm Bureau Rural Electrification Cooperative, Inc., an instrument in deed form in and by which this corporation was granted a right of way along the east side of State Highway No. 69 "within one foot of highway limits and or not more than one foot of highway limits." This easement was granted to said corporation subject to the condition that construction of the electric lines of said company be commenced on or before November 1, 1936. On June 30, 1936, this easement and the rights of Farm Bureau Rural Electrification Cooperative, Inc., under the same were assigned to Pioneer Rural Electric Cooperative, Inc., which thereafter owned and held the rights under said easement subject to the conditions upon which the same was granted to Farm Bureau Rural Electrification Cooperative, Inc. I am not advised by the abstract of title or otherwise as to what, if anything, has been done by either of these corporations under this easement in the way of electric line construction nor am I advised as to how this easement or any electric line construction under the same will affect the above described property or any use that you desire to make of the same in connection with the Kiser Lake Project for and in connection with which this property is to be acquired. You are doubtless familiar with all of these facts and this easement is here noted as an exception for the reason that as a matter of law the same is an encumbrance upon property now owned and held by Floyd Frank and Rebekah Frank.

3. The above described property and a larger tract of 80 acres of which the property here in question is a part were formerly owned as tenants in common by John E. Frank and Ella Frank, the father and mother of Floyd Frank and one Avice Hessel, their only children and heirs at law. John E. Frank died intestate on July 2, 1926, and upon

the death of John E. Frank his undivided interest in the property descended to his son Floyd Frank and to his daughter Avice Hessel subject to the dower interest therein of his widow Ella Frank. Ella Frank was still living as late as December 12, 1928, when she and Floyd Frank and Avice Hessel, together with their respective spouses, executed a deed in and by which they conveyed to one Herby L. Wertz four acres out of the 80-acre tract of land above referred to. On November 1, 1930, Avice Hessel and George Hessel, her husband, conveyed to Floyd Frank and Rebekah Frank an "undivided $\frac{1}{4}$ part" of this larger tract of land which, presumably, was Avice Hessel's undivided one-half interest in the undivided one-half interest in this tract of land which she and her brother Floyd Frank inherited on the death of their father John E. Frank. Later, on July 13, 1935, Avice Hessel and George Hessel, her husband, executed a quit claim deed in and by which they remised, released and forever quit claimed to Floyd Frank and Rebekah Frank all of their right, title and interest in said larger tract of land. I assume that Ella Frank died some time between December 12, 1928, and July 13, 1935. However, the abstract of title does not show any administration of her estate nor does it show affirmatively the fact of her death.

The abstract of title as submitted should, therefore, be returned to the abstracter with instructions to set out the fact of death of Ella Frank if, as a mater of fact, such death has occurred.

4. There is nothing stated in the abstract with respect to the administration of the estate of John E. Frank, deceased, and in this situation satisfactory evidence should be furnished and be made a part of the abstract showing that all of the debts of John E. Frank have been paid and that the inheritance taxes, if any, accruing on the successions to her estate have been paid.

For the reasons above stated, I am not able to approve the abstract of title as the same is submitted to me.

The warranty deed, contract encumbrance record and other files submitted for my examination in connection with the proposed purchase of the above described tract of land seem to be in proper form and I am holding the same until the return of the abstract of title to me with the additional information herein requested.

Respectfully,

HERBERT S. DUFFY,
Attorney General.