

which Kelly Myers owns and holds the above described property, his title to this property is approved and I am herewith returning to you for further proceedings relating to the purchase of this property, the certificates of title above referred to and the warranty deed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5805.

APPROVAL—CERTIFICATE OF TITLE TO LAND IN GREEN TOWNSHIP, SUMMIT COUNTY, OHIO—NORTHERN OHIO GUARANTEE TITLE COMPANY OF AKRON, OHIO.

COLUMBUS, OHIO, July 6, 1936.

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 guaranteed by The Northern Ohio Guarantee Title Company of Akron, Ohio, a warranty deed and contract encumbrance record No. 3, all of which relate to the proposed purchase by the state of Ohio for the use of your department in the construction of the Nimisila Creek Basin Reservoir improvement, of a tract of land which is owned of record by one Kelly Myers in Green Township, Summit County, Ohio. This tract of land is a part of the southwest quarter of Section 30 in said township and is more particularly described by metes and bounds as follows:

Beginning at an iron pipe set in a tile on the south line of Section No. 30 S. 82° 45' 50" E. thirteen hundred sixty-three and sixty-two hundredths (1363.62) feet from the southwest corner of Section No. 30; thence S. 82° 45' 50" E. two hundred sixty-seven and ninety-six hundredths (267.96) feet to a stake; thence along the old tail race from the Comet Mill N. 61° 42' 30" E. five hundred fifty-seven and four hundredths (557.04) feet to a stake; thence N. 71° 55' 00" E. ninety-nine and no hundredths (99.00) feet to a stake; thence S. 80° 50' 00" E. seventy-one and ninety-four hundredths (71.94) feet to a stake; thence leaving the old tail race N. 6° 55' 00" E. eight hundred sixty-seven and ninety hundredths (867.90) feet to a post; thence N. 83° 08' 00" W. four hundred ninety and thirty-eight hundredths (490.38) feet to a post; thence along the west bank of a stream

S. 8° 08' 00" E. one hundred eighty-eight and seventy-six hundredths (188.76) feet to a stake; thence S. 50° 07' 00" W. three hundred sixty-three and no hundredths (363.00) feet to a stake; thence S. 16° 36' 00" W. one hundred ninety-nine and ninety-eight hundredths (199.98) feet to a stake; thence S. 32° 52' 00" W. eighty and fifty-two hundredths (80.52) feet to a stake; thence S. 47° 37' 00" W. seventy-seven and twenty-two hundredths (77.22) feet to a stake; thence leaving the stream bank S. 88° 38' 30" W. seventy-five and seventeen hundredths (75.17) feet to a stake; thence S. 7° 04' 40" W. four hundred forty and thirty-five hundredths (440.35) feet to the place of beginning and containing seventeen and seven hundredths (17.07) acres, as surveyed April 25, 1936, by Francis Stafford.

Upon examination of this certificate of title, which is certified by said title company under date of March 25, 1936, I find that as of said date Kelly Myers had a good indefeasible fee simple title to the above described tract of land and that he owned and held the same free and clear of all encumbrances except those hereinafter mentioned which are here noted as exceptions to the title in and by which Kelly Myers owns and holds this property:

1. On August 16, 1902, Elias Myers, the predecessor in title of Kelly Myers in the ownership of this property, executed an easement deed to The East Ohio Gas Company in and by which there was granted to said company a right of way for two pipe lines for the transportation of gas in and over this tract of land, and also a right of way for the construction of a telegraph line along the public road adjacent to this tract of land. This easement and any pipe lines or other lines constructed in and upon the premises pursuant to this grant are an encumbrance upon the property.

2. On February 9, 1932, Kelly Myers and Lena Myers, his wife executed to The East Ohio Gas Company an oil and gas lease upon the above described premises. By this lease, The East Ohio Gas Company, as the lessee therein named, was given the right to enter in and upon the premises for the purpose of drilling thereon for oil and gas or either and to lay pipe lines and erect such tanks and other structures as might be necessary in the production and transportation of gas or oil products taken from the land. The lease was for a term of five years from July 22, 1932, and so much longer as oil or gas might be found on the land in paying quantities. This lease outstanding in The East Ohio Gas Company is, of course, an encumbrance upon this property.

3. On July 18, 1930, The Central Depositors Bank and Trust Com-

pany obtained a judgment in the Common Pleas Court of Summit County in Case No. 8397 on the dockets of said court, against the firm of Baricc and Myers composed of K. M. Myers and Frank Barico. This judgment was in and for the sum of \$500.00, with interest thereon at 6% from March 8, 1930, and the costs in this case. On July 5, 1935, an execution was issued to the Sheriff of Summit County on this judgment and returned unsatisfied on the same date. Assuming, as I do for the purpose of this opinion, that K. M. Myers, the judgment debtor above named, is one and the same person as Kelly Myers, the owner of the property here in question, the judgment above referred to is a lien upon this property in the total amount of said judgment, interest and costs. Needless to say, this judgment, which is a lien upon this and all other real property owned by Kelly Myers in Summit County, should be satisfied, discharged or otherwise released of record before your department closes the transaction for the purchase of this property.

With respect to the encumbrances noted as exceptions Nos. 1 and 2 above, by reason of the right of way easement held by The East Ohio Gas Company in and over the land, and existing by reason of the oil and gas lease on the property above referred to, there is nothing in the certificate of title to show what, if anything, The East Ohio Gas Company has done with respect to the matters above indicated. As to this, it is noted that in the warranty deed tendered to the state of Ohio by Kelly Myers there is a covenant that this property is free and clear of all encumbrances whatsoever. From this, it may be inferred that either no action has been taken by the gas company under the instruments here referred to and that all rights under the same have been abandoned or that the grantor undertakes to warrant that the gas company will release its rights under this easement deed and under the oil and gas lease which it now holds. In any event, the question as to how far this easement and outstanding oil and gas lease will affect the use of this property for the intended purpose is a matter to be investigated and determined by your department and by the engineers in charge of this improvement.

4. The taxes on this property for the year 1935 are unpaid and are a lien on the property, as are the undetermined taxes for the year 1936. The certificate of title submitted to me does not indicate the amount of these taxes. Whatever the amount of these taxes may prove to be, it is incumbent upon your department to see that these taxes are paid before the transaction for the purchase of this property is closed.

Upon examination of the warranty deed tendered by Kelly Myers, I find that the same has been properly executed and acknowledged by him and by his wife, Lena Myers, who thereby releases to the state of Ohio her dower interest in this property. I further find that the form of this deed is such that the same is legally sufficient to convey the above de-

scribed property to the state of Ohio by full fee simple title with a covenant of warranty that the same is free and clear of all encumbrances whatsoever.

Upon examination of contract encumbrance record No. 3, above referred to, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance to the credit of your department for the purchase of lands in connection with the construction of the Nimisila Creek Basin Reservoir to pay the purchase price of the property above described, which purchase price is the sum of \$1700.00.

Subject only to the exceptions above noted, the title of Kelly Myers in and to the property above described is approved as is likewise the warranty deed and contract encumbrance record submitted to me. I am herewith enclosing the certificate of title, warranty deed and contract encumbrance record.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5806.

CIVIL SERVICE COMMISSION—MAY NOT CERTIFY LIST OF THREE NAMES OF A PARTICULAR SEX WHERE EXAMINATION WAS NOT SO LIMITED—APPOINTING AUTHORITY MAY REFUSE IMPROPER LIST.

SYLLABUS:

1. *Under the Civil Service Laws of the State of Ohio, the Civil Service Commission of the State of Ohio does not have the authority, when certifying an eligible list, as provided by Section 486-13, General Code, to certify only the names of males or females, as the case may be, where the Civil Service Commission in creating an eligible list does not limit the applicants who may take such competitive examinations to persons of a particular sex. The Civil Service Commission after an eligible list has been created, cannot certify to an appointing authority for the purpose of filling a vacancy in a position in the classified civil service two eligible lists, one containing the names of the three male persons standing highest on the list and another containing the names of the three female persons standing highest on the list.*

2. *The County Commissioners of a county, when empowered by law to act as the appointing authority in filling a vacancy in a position in the classified civil service of the county, can and should refuse to accept an eligible list certified by the civil service commission of the state of Ohio*