

2408.

APPROVAL—BONDS, CITY OF CAMPBELL, MAHONING COUNTY, OHIO, \$14,000.00, PART OF ISSUE DATED MAY 15, 1935.

COLUMBUS, OHIO, May 5, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of City of Campbell,
Mahoning County, Ohio, \$14,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated May 15, 1935. The transcript relative to this issue was approved by this office in an opinion rendered to your commission under date of August 6, 1937, being Opinion No. 982.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2409.

APPROVAL—APPROPRIATION, TRACT OF LAND, STATE OF OHIO, THROUGH SUPERINTENDENT, DEPARTMENT OF PUBLIC WORKS, DESIGNATED AND DESCRIBED, GREEN TOWNSHIP, SUMMIT COUNTY, OHIO, FRANK GEIG AND JULIA GEIG, GRANTORS, PURCHASE PRICE, \$2,617.52, USE, NIMISILA BASIN RESERVOIR.

COLUMBUS, OHIO, May 5, 1938.

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

DEAR SIR: You have submitted for my examination and approval a transcript of your proceedings as Superintendent of Public Works and as Director of said department effecting an appropriation of a

tract of land owned of record by Frank Geig and Julia Geig in the northwest quarter of Section 32, Green Township, Summit County, Ohio, which tract of land is more fully described as follows:

Beginning at a stone located on the center line of Christman Road and on the northwest corner of Section No. 32; thence S. $83^{\circ} 12' 00''$ E. along the south line of lands now or formerly owned by A. Killinger, seven hundred forty and no hundredths (740.00) feet to a stake; thence S. $6^{\circ} 54' 40''$ W. on a line parallel to the center line of Christman Road and the west line of the northwest quarter of Section No. 32, three hundred seventy-five and no hundredths (375.00) feet to a stake; thence S. $83^{\circ} 12' 00''$ E. on a line parallel with Killinger's south line three hundred and no hundredths (300.00) feet to a stake; thence S. $6^{\circ} 54' 40''$ W. on a line parallel to the center line of Christman Road and the west line of the northwest quarter of Section No. 32 nine hundred fifty-seven and twelve hundredths (957.12) feet to a stake set in the north line of property belonging to Steve and Anna Hoffman; thence N. $83^{\circ} 32' 20''$ W. along the north line of property belonging to Steve and Anna Hoffman and property belonging to Albert Workinger, one thousand forty and three hundredths (1,040.03) feet to a stake in the center line of Christman Road and the west line of the northwest quarter of Section No. 32; thence N. $6^{\circ} 54' 40''$ E., along the center line of Christman Road and the west line of the northwest quarter of Section No. 32, thirteen hundred thirty-eight and twenty-seven hundredths (1,338.27) feet, to the place of beginning, and containing twenty-nine and twenty-nine hundredths (29.29) acres; as surveyed by Francis W. Stafford.

The proceedings herein referred to likewise effected an appropriation of an easement or right of flowage over a marginal strip of land owned by said Frank Geig and Julia Geig adjoining the waters of Nimisila Reservoir.

Included with the transcript of your proceedings relating to the appropriation of the above described property and to some extent constituting a part of such transcript is a certificate of title of the above described and other property owned by said Frank Geig and Julia Geig; and with the same you likewise submit to me a warranty deed conveying to the State of Ohio the tract of land above described, which deed was executed after the return of the verdict of the jury

fixing the compensation and damages to be paid for the above described tract of land and for the flowage easement hereinbefore referred to. You likewise enclose contract encumbrance record No. 39 covering the amount of the compensation and damages to be paid for this property and the court costs in the Probate Court of Summit County wherein your certificate of appropriation was filed.

Upon examination of your proceedings relating to the appropriation of this property and of those in the Probate Court of Summit County, Ohio, for the assessment of the compensation and damages to be paid for the property above described and referred to, I find that said proceedings ending with the verdict of the jury fixing the amount of such compensation and damages were and are substantially regular; and that upon payment of the amount of the compensation and damages assessed for this property, together with the court costs in the case, the State of Ohio will obtain a good and indefeasible fee simple title to this property upon the filing of the proper entry therefor vesting the title to this property in the State of Ohio; and that it will own and hold this property free and clear of all encumbrances so far as the interests of the parties to this appropriation proceeding are concerned. In this connection, it is noted that besides said Frank Geig and Julia Geig certain other corporations and persons were made parties to this appropriation proceeding as follows, to-wit: (1) The East Ohio Gas Company by reason of certain rights owned and held by it in the premises predicated on an oil and gas lease and certain right-of-way easements theretofore granted to it upon said premises; (2) The Ohio Edison Company, as successor to The Northern Ohio Traction and Light Company, by reason of certain rights owned and held by it, predicated on certain right-of-way easements theretofore granted to said company or its predecessors in title; (3) The Federal Land Bank of Louisville by reason of its ownership of a certain mortgage upon the above described and other premises of Frank Geig and Julia Geig, which mortgage was set up in the answer and cross petition filed by The Federal Land Bank of Louisville in the appropriation case in the Probate Court of Summit County, Ohio, as a claim and lien in the amount of \$3282.44, with interest at 5½% from February 15, 1938; and (4) John Muranyi, the owner and holder of a mortgage on the above described premises, which mortgage at the time of its execution was one securing the payment of a promissory note of even date therewith in the sum of \$2,000.00, with interest from the date thereof (September 15, 1932) at the rate of 5% per annum.

In this situation, I am of the opinion that the proper procedure is for the issuance of a voucher and warrant payable to Dean F. May,

Probate Judge of Summit County, Ohio, in the sum of \$2617.52 covering the amount of the compensation and damages assessed for and with respect to the above described property and the court costs in the case in the sum of \$117.52. When the warrant in the amount above stated is paid over to said Probate Judge as the Probate Court of said county, there should be filed in said court and case an entry in proper form vesting title to the property in the State of Ohio and reserving to the court the right, power and authority of distributing said sum of \$2500.00, paid as compensation and damages for the property, to the parties to said cause and proceedings as their interests may appear. In this connection, it is noted from the certificate of title submitted to me that delinquent taxes on the property for former years and penalties thereon, amounting to the sum of \$114.64, are a lien on this property; that the taxes for the year 1937, amounting to the sum of \$20.74, are likewise a lien upon the property, as are the undetermined taxes for the year 1938. These taxes or such thereof as are properly payable out of the funds to be deposited with the court as aforesaid should be paid to the County Treasurer on order of the court before the balance of said sum of \$2500.00 is distributed by him.

Although by reason of the fact that the amount of the liens on the above described premises exceeds the amount assessed by the jury as the compensation and damages to be paid with respect to the property above described and referred to, I deem it advisable that the state take its title to this property on the appropriation proceeding above referred to in the Probate Court of Summit County, Ohio. There is, of course, no objection to the acceptance of the warranty deed which has been tendered by Frank Geig and Julia Geig. Upon examination of this warranty deed, I find that the same has been properly executed and acknowledged by said Frank Geig and Julia Geig who thereby convey to the State their respective interests as tenants in common in this property and release to the State their respective dower interests therein. The form of this deed is such that the same is legally sufficient to convey this property to the State of Ohio by fee simple title with a covenant of warranty that the property is free and clear of all encumbrances whatsoever.

I herewith enclose an entry to be signed by the court and filed in the case which will have the effect of vesting the title to this property in the State of Ohio, reserving to the court the power and authority to distribute the money paid into the court by the warrant above referred to. I am herewith returning to you the transcript of your proceedings relating to the appropriation of this property, including the certificate of title above referred to, the warranty deed

executed by Frank Geig and Julia Geig, contract encumbrance record No. 39, which has been found to be in all respects regular, and the other files in the case which you submitted to me.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2410.

COMMON PLEAS COURT JUDGE—MAY NOT CERTIFY
CASE TO JUVENILE COURT UNLESS JUVENILE
COURT JUDGE CONSENTS TO CERTIFICATION.

SYLLABUS:

Cases may not be certified to a Juvenile Court by a Common Pleas Court unless the judge of the Juvenile Court consents to the certification.

COLUMBUS, OHIO, May 5, 1938.

HON. FREDERICK R. PARKER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR: I am in receipt of your recent communication requesting my opinion in which you forwarded a communication which reads as follows:

"Section 8034-1 of the General Code provides in substance that the common pleas court may certify matters pertaining to the support and custody of minor children to the juvenile court for further proceedings thereunder according to law, and that when so certified the jurisdiction of the common pleas court shall cease. This section became effective July 19, 1923, and was formerly G. C. 1642-1.

Under the new juvenile court section 1639-16 paragraph C provides that matters of care and custody of children may be certified by the presiding judge of the common pleas court with all the papers filed therein to the juvenile court:

'Provided, however, that no such certification shall be made in either case unless the consent of the Judge of the Court exercising the powers and jurisdiction conferred in this chapter is first obtained.'