

able that since the certification of this abstract the taxes for the last half of the year 1931 have been paid. However, this may be, it is noted that there has been no segregation of the taxes with respect to the 3.93 acre tract involved in the proposed purchase. This should, of course, be done and an adjustment should be made of these taxes in accordance with the agreement of the parties with respect to this matter.

The warranty deed tendered by May M. Bishop and Jacob H. Bishop has been properly executed and acknowledged by them, as grantors; and the form of this deed is such that it is sufficient to convey the above described tract of land to the State of Ohio by fee simple title, free and clear of their respective dower interests of each of said grantors, and free of all encumbrances "except taxes and assessments for the year 1932, and thereafter, that is, grantors will pay all taxes and assessments falling due in the year 1931, and the grantee assumes all taxes and assessments falling due thereafter."

This deed, as others tendered to the state for the conveyance of tracts of land in connection with the proposed Maumee River Park, is defective in that the true amount of the consideration for the conveyance is not set out in the deed, and for the reason that the grantee in the deed is described "State of Ohio, Division of Conservation" instead of "State of Ohio" as it should be.

Encumbrance record No. 42 has been properly executed and approved and the same shows that there is a sufficient balance in the proper appropriation account to pay the purchase price of this property, which purchase price is the sum of \$443.00. It likewise appears from a recital contained in this encumbrance record that the money necessary to pay the purchase price of the above described, and other tracts of land for Maumee River Park, has been released for the purchase by the Board of Control.

Subject to the exceptions above noted, the abstract of title and warranty deed are hereby approved and the same together with encumbrance record No. 42 are herewith enclosed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4645.

APPROVAL, CONDITIONALLY, ABSTRACT OF TITLE TO LAND IN
GRAND RAPIDS TOWNSHIP, WOOD COUNTY, OHIO.

COLUMBUS, OHIO, September 23, 1932.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a recent communication from the Division of Conservation in your department, submitting for my examination and approval an abstract of title, warranty deed and Encumbrance Record No. 51, relating to a tract of land in Grand Rapids Township, Wood County, Ohio, which the state proposes to purchase as a part of the Maumee River Park, which is being established under the supervision of the Conservation Division. The tract of land here in question is a part of the northwest quarter of section 7, town 5 north, range 9 east, in said township and county and is more particularly described as follows:

"Beginning at a point in the center line of I. C. H. No. 285, U. S. Highway No. 24, that is 933.9 feet westerly as measured along said center line of said highway from the north and south half section line of Section 7; thence North 2 deg. 17' East, 858 feet to the low water mark of the Maumee River; thence following the said low water mark of the Maumee River, South 81 deg., 37' West, 193.4 feet to a point; thence North 76 deg. 32' West, 403.2 feet to a point; thence south 2 deg. 17' west, 970.6 feet to the center line of said I. C. H. No. 285; thence in an easterly direction along the arc of a 4 deg. curve to the left (Radius 1432.69') in the center line of said road, 173.7 feet to the point tangency to a line which bearing is North 84 deg. 54' East; thence further along said center line North 84 deg. 54' East 416.6 feet, to the place of beginning, and containing twelve (12) acres of land.

Excepting and reserving, to the grantors, their heirs, assigns, tenants, licensees, and all persons for the benefit or advantage of the grantors a right of way over, across and upon the above described lands for the purpose of having and obtaining ingress and egress to grantors' lands which are located west and adjacent to the above land."

An examination of the abstract of title, which is certified by the abstracter under date of June 30, 1932, I find that the underlying fee title to this property is owned by Harold M. Kecheley, Mabel Ruth Kecheley and Helen Eloise Kecheley, subject to an outstanding life estate in their father, Henry T. Kecheley, as well as to a life estate in their mother, Carrie E. Kecheley, during the time that she may survive her husband, Henry T. Kecheley, and remains unmarried.

The estate owned and held by the above named persons jointly is free and clear of encumbrances except as follows:

1. On January 3, 1931, the above named persons, owners of the property here in question, executed a mortgage to the Ohio Savings Bank and Trust Company of Toledo, Ohio, to secure the payment of a promissory note in the principal sum of \$1280.00, which was due and payable on or before the 3rd day of January, 1932, with interest thereon at the rate therein stipulated. This mortgage was and is one covering a larger tract of 36 acres, including the particular tract of land here under investigation. It does not appear that this mortgage has been cancelled of record and the same to the extent of the sum of money remaining unpaid on the obligation secured by this mortgage is a lien upon this property.

2. On or about the 17th day of March, 1931, Henry T. Kecheley, above mentioned, executed a lease upon the 36 acre tract, of which the land here under investigation is a part, to the Henry County Oil and Gas Company, by the provisions of which said lessee was given the right to enter upon and occupy said land for the purpose of developing oil and gas thereon. This lease which was and is one for a stated term of five years and for as long thereafter as oil or gas is produced from the land, was filed for record June 8, 1931, and is found of record in Vol. 46, p. 226 of the lease records of Wood County. This has not been cancelled of record and the same is an encumbrance upon the estate and interest of Henry T. Kecheley in this land. Although this is a matter to be decided by the Division of Conservation rather than by this office, I am inclined to the view that the development of oil and gas on this property will be a serious interference with the use of this land for park purposes.

Before the transaction for the purchase of this property is consummated by the delivery of a warrant covering the purchase price of the same, this property

should be released from the operation of the mortgage above referred to, as well as from the operation of said oil and gas lease.

It appears that as of the date of the certification of this abstract, to wit June 30, 1932, taxes in the amount of \$463.14, were due and unpaid upon the 36 acre tract of land, of which the tract here under investigation is a part. Some of these taxes have apparently been delinquent since February, 1929, and such delinquent taxes are subject to penalty and if certified are likewise subject to the payment of interest. It is not clear whether the taxes for the last half of the year 1931 are included in the sum of \$463.14 above referred to. If not, these taxes would, of course, be in addition to this amount of delinquent taxes. The undetermined taxes for the year 1932 are, of course, likewise a lien upon the larger tract of land which includes the land here under investigation. In this connection, it is evident from what has been said that there has been no segregation of any of these taxes with respect to the particular tract of land involved in the proposed purchase. Before the transaction for the purchase of this property is closed, such segregation should be made and an adjustment should be made with respect to their status in accordance with the agreement of the parties, which agreement I assume is that carried into the warranty clause of the deed which has been tendered to the State of Ohio. This clause provides that the property is free and clear of all encumbrances whatsoever "except all taxes and assessments due and payable after this date", to wit the —— day of August, 1932.

Upon examination of the warranty deed tendered by the owners of this property, above named, I find that said deed has been properly executed and acknowledged by said persons and by Freda Kecheley, the wife of Harold Kecheley, and that the form of said deed is such as is legally sufficient to convey this property to the State of Ohio by fee simple title free and clear of the dower interest of Freda Kecheley in the undivided interest of Harold Kecheley in and to this property and free and clear of all encumbrances except taxes and assessments due and payable after the date of the execution of the above deed, which, as above noted, was some time in the month of August, 1932. There is a defect in the deed in this, that the real consideration for the conveyance of the property is not set out in the deed as is required by the settled policy of this office with respect to all deeds executed to the State of Ohio.

Upon examination of Encumbrance Record No. 51, I find that the same has been properly executed and approved and that there is shown thereby a sufficient balance in the proper appropriation account to pay the purchase price of the above described property, which purchase price is the sum of One Thousand Dollars. It is likewise noted from a recital of said encumbrance record that the money necessary to pay the purchase price of this and other tracts of land for said Maumee River Park has been released for the purpose by the Board of Control.

Subject to the exceptions above noted, the title of Henry T. Kecheley, Carrie E. Kecheley, Harold Kecheley, Mabel R. Kecheley and Helen E. Kecheley in and to this property is approved and the abstract of title, together with the warranty deed and encumbrance record No. 51 are herewith returned to you.

Respectfully,

GILBERT BETTMAN,
Attorney General.