

5023.

APPROVAL, BONDS OF WREN VILLAGE SCHOOL DISTRICT,  
VAN WERT COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, December 19, 1935.

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

5024.

DISAPPROVAL, ABSTRACT OF TITLE, ETC., TO LAND IN  
HOCKING TOWNSHIP, FAIRFIELD COUNTY, OHIO—  
EDWARD J. SMITH.

COLUMBUS, OHIO, December 19, 1935.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare,*  
*Columbus, Ohio.*

DEAR MADAM:—This is to acknowledge the receipt of a recent communication from your department over the signature of the Assistant Director of Public Welfare submitting for my examination and approval an abstract of title, warranty deed form, contract encumbrance record No. 7 and Controlling Board certificate relating to the proposed purchase by the state of Ohio of a tract of land owned of record by one Edward J. Smith in Hocking Township, Fairfield County, Ohio. This tract of land is more particularly described in the caption of the abstract of title and in the deed form of the deed to be executed by Edward J. Smith and by Elizabeth Smith, his wife, conveying this property to the state of Ohio, as follows:

Being a part of the east half of the southeast quarter of Section No. 23, Township No. 14 of Range No. 19, beginning at the north-east corner of said quarter section; thence West along the half section line to a point where the center line of the Lancaster Traction and Power Company's right of way as at present located, intersects said half section line; thence south along the center line of said company's said right-of-way to a point where said center line intersects the south boundary line of said quarter section; thence east along said South boundary line, being the south line of said section, to the south-east corner of said quarter section; thence North along the east line of said quarter section to the place of beginning, containing forty-two (42) acres more or less.

Upon examination of the abstract of title, I find that subject to certain minor exceptions hereinafter noted, Edward J. Smith has a good merchantable fee simple title to most of the property above described. However, there is one objection affecting a comparatively small part of the land included within the above description of the tract of land to be conveyed to the State which prevents my approval of the title to this tract of land upon the abstract submitted to me. It will be noted from the above stated description of this tract of land that the center line of the right of way of the Lancaster Traction and Power Company from a point in the north line of the southeast quarter of section No. 23 to the south line of said quarter section is made the west line of the forty-two acre tract of land above described. In other words, included within this tract of land as described, which is stated to be forty-two acres, more or less, is that part of the right of way of the Lancaster Traction and Power Company which lies east of the center line of such right of way. There is nothing in the abstract of title to show by what title or right the Lancaster Traction and Power Company owns or holds the lands included within said right of way. In this situation, it is clear that if said company owns the lands here in question included within said right of way, Edward J. Smith does not own such lands or any part of the same, and the amount or quantity of land that he can convey to the state of Ohio is not that described in the abstract and in the deed form submitted, but is this amount or quantity of land diminished by the amount or quantity of land in the right of way which lies east of the center line of such right of way. On the other hand, if the Lancaster Traction and Power Company holds the lands included within its right of way for traction purposes only with the right to hold and possess these lands only as long as they are used for traction line purposes, it may be that the interest of this company in its right of way land is only an easement for said purpose subject to an outstanding fee simple title owned and held either by Edward J. Smith, the owner of the contiguous lands lying east of said right of way or by the original owner of the right of way lands here in question or by his heirs and assigns, depending upon the terms and conditions upon which said easement was acquired. It is obvious from the facts above stated and the situation here outlined that the quantity of land and the estate therein that will be acquired by the state of Ohio by the deed of Edward J. Smith and wife, above referred to, cannot be known without a supplemental abstract of title showing the title in and by which the Lancaster Traction and Power Company now owns or holds the right of way lands here in question which are included within the description of the property to be conveyed to the State.

It is further noted as an exception to the title in and by which Edward J. Smith owns and holds the property here in question that under date of October 14, 1910, Anastasia Schneider, who then owned this property, executed an oil and gas lease on this property to the Central Contract and

Finance Company. This lease was for a term of five years from the date thereof and so long thereafter as gas and oil might be produced from said premises. If oil and gas or either of said products were developed on this property during said five-year term and if the same or either is now being produced on said lands, this lease by the terms thereof would be still in effect. Although it is quite probable that the rights of the above named lessee under this lease have long since lapsed, further information with respect to the facts in regard to this lease should be set out in the abstract.

With the abstract of title submitted to me, you likewise submit a warranty deed form of the deed to be executed by Edward J. Smith and by Elizabeth Smith, his wife, conveying the above described property to the state. This deed has not yet been executed and all that I can speak of at this time is as to the form of said deed as to which two objections are noted. The consideration stated in this deed form is "One Dollar (\$1.00) and other valuable considerations". Consistent with the requirement of this office and of the Auditor of State, the actual consideration upon which the deed is to be executed should be stated in the deed. This consideration, as I am advised from the contract encumbrance record submitted to me, is the sum of thirty-five hundred dollars. In said warranty deed form, following the warranty clause, there is a recital that "The grantee assumes and agrees to pay all taxes and assessments on said real estate due and payable December 1935, and thereafter." Inasmuch as this property, when the same is acquired by the state of Ohio, will be exempt from taxation, and since no officer of the State in accepting a deed on its behalf can impose upon the State an obligation to pay taxes on property acquired by it, there is no legal authority for this recital. The grantor in this deed can accomplish the purpose which he has in mind of excepting from his warranty the taxes for the year 1935 which are a lien upon this property by expressly "excepting all taxes and assessments on said real estate due and payable December, 1935, and thereafter."

I have examined contract encumbrance record No. 7 and the Controlling Board certificate submitted as part of the files relating to the purchase of the above described property and find that there is made available by these instruments a sufficient amount of unencumbered moneys in the appropriation account to the credit of the Department of Public Welfare to pay the purchase price of this property.

I am herewith returning to you the abstract of title and the warranty deed form above referred to and discussed, for correction with respect to the matters noted in this opinion. I am holding said contract encumbrance record and Controlling Board certificate in my files awaiting the return of the corrected abstract of title and corrected deed.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*