

3773.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE GENERAL ELECTRIC COMPANY OF SCHENECTADY, NEW YORK, FOR TURBO GENERATOR UNIT FOR OHIO PENITENTIARY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$67,000.00. SURETY BOND EXECUTED BY THE NATIONAL UNION INDEMNITY COMPANY.

COLUMBUS, OHIO, November 17, 1931.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare (Ohio Penitentiary, Columbus, Ohio) and the General Electric Company of Schenectady, New York. This contract covers the construction and completion of a 3000 KW 80% P. F. Turbo Generator Unit for the Ohio Penitentiary, Columbus, Ohio, in accordance with the form of proposal dated October 16, 1931. Said contract calls for an expenditure of sixty-seven thousand dollars (\$67,000.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained as required by Section 8 of House Bill 624 of the 89th General Assembly. In addition, you have submitted a contract bond, upon which the National Union Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with. A certificate of the Secretary of State shows that the contracting foreign corporation is authorized to do business in Ohio.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3774.

APPROVAL, ABSTRACT OF TITLE TO LAND OF EDWARD W. STRONG, IN VINTON COUNTY, OHIO.

COLUMBUS, OHIO, November 18, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—Recently, Opinion No. 3559 was directed to you analyzing the abstract of title and papers relating to the proposed purchase of a 3393 acre

tract of land in Vinton County, Ohio, from Edward W. Strong, and pointing out a number of irregularities and deficiencies in said abstract and papers. In the interim, further information bearing upon the title has been gathered and inserted as a supplement at the beginning of the abstract, said supplemental pages being numbered 1 to 30. This additional information, together with an affidavit submitted by Mr. Strong, sufficiently clears the title of this land, and I therefore give my approval thereto.

Reference to the records in the recorder's office of Vinton County has shown that lot No. 11 was, in fact, inserted in the deed by the receiver of the Zuleski Company to Mr. Strong and Mr. McClintick (p. 1, Supplement).

In the former opinion, it was pointed out that the proposed deed to the state accepted numerous parcels of land which had previously been conveyed to other parties, and that the deed to the state made no reference to the place in the county records where some of these deeds of exceptions were to be found. This situation has been corrected in a new draft of a deed to the state which correctly gives the volume and page in the county records of the deeds which are the subject of said exceptions.

In the newly proposed deed, the dates given on the various transactions have all been checked, and I now find them all to be correct.

Supplemental pages 18 and 19 show that the conveyances to Mr. McClintick and Mr. Strong first by George R. Merritt and secondly by Elizabeth Muething were, in fact, conveyances of a joint estate with survivorship. Due to the oversight of stenographers, the original abstract had failed to show the survivorship feature. Likewise, due to such oversight, the original abstract failed to show that George R. Merritt was an unmarried man at the time of the first named conveyance, but supplemental page 18 now shows that fact, thus eliminating any possibility of the land, which was the subject of that conveyance, being the subject of a claim of dower.

In the former opinion, the statement of the distance of a certain call in the description of tract No. 12 as being 39.15 chains was questioned as being erroneous. A survey has since been made by agents of the state and this call was found to be actually 26.47 chains, and the latter measurement has now been inserted in place of the former in the state deed.

In the first opinion, it was intimated that the record showed that one Abram H. Kinney was possibly the owner of some land in tract No. 11 which had not been excepted from the state deed. A subsequent survey of the land revealed that Mr. Kinney did actually own a small strip of land in said tract No. 11, and said strip has been listed as an exception in the newly drafted deed to the state.

Furthermore, the former opinion called attention to the fact that the sixth call in the description of tract No. 11 in the proposed state deed had been erroneously designated as running in a southwesterly direction. Reconsideration has substantiated that, in fact, it runs in a northwesterly direction along the north line of the corporation boundary of Suleski to the west line of the section, and this correction has been properly inserted in the newly drafted deed.

Some question was raised in the former opinion as to whether the 5.05 acre tract of land conveyed by the Zuleski Company to George Atkinson did not fall within the boundaries of the 11th tract now proposed to be conveyed to the state. This question arose because of certain ambiguities in said deed to said George Atkinson. Very coincidentally, it now happens that Mr. Homer Atkin-

son, the person who made the present abstract of title, has succeeded to the ownership of said 5.05 acre tract of land. He certifies, on supplemental page 1, that the location of the tract deeded to his predecessor is correctly shown upon the plat which was submitted to me with the papers relating to the land now proposed to be purchased by the state. The Atkinson tract, as shown by said plat, definitely lies outside of the boundaries of the land to be conveyed to the state.

The sixth call in the description of the fifteenth tract which was previously pointed out as being erroneously described as going "to the *east* line of A. H. Kimmey's land" has been correctly changed "to the *west* line of A. H. Kimmey's land."

Likewise, the call which was shown by the former opinion to have been omitted from the description of the northeast boundary of the sixteenth tract at the point where the state tract is adjacent to the south part of the land conveyed by the Zuleski Company to David Curran has been inserted in the new deed.

The point referred to in parenthesis, in the eighth tract of the state deed, as being "the northeast corner of *Fifteenth* Tract" has been correctly changed to read "the northeast corner of *Fourteenth* Tract."

Approval of the title of tract No. 25 was withheld in the former opinion because though it appeared that said tract was formerly a part of the "Ministerial Lands" of the state, the abstract did not show that the State of Ohio had ever parted with the title to said tract. On a re-examination of the Vinton County records, the abstracter discovered a deed (Supplement, p. 28) made by the State of Ohio in 1889 conveying said tract to the Cincinnati, Washington & Baltimore Railroad Company. In 1894 The Baltimore & Ohio Southwestern Railway Company, the successor to the aforesaid railroad company, conveyed said tract to The Zaleski Company (Abstract, p. 398) and, in 1895, it was conveyed by The Zaleski Company's Receiver to Messrs. McClintick and Strong as a joint estate with survivorship (Abstract, p. 849 at p. 865). Hence, the title to tract No. 25 is approved.

Further information was requested by the former opinion in order to show the derivation from the State of Ohio of the title to tract No. 27 which was also a part of the "Ministerial Lands" at one time. Mr. Strong derives his title through an early predecessor, one James Peacock. Said Peacock obtained a deed from the State for an .80 acre parcel of land in 1892 which was described as tract No. 7 in Section 29, Town 10, Range 16. No plats are available either in the Vinton County Records or in the State Auditor's Office to show just where said tract No. 7 is located in said Section 29. Moreover, there are no common descriptive terms in the description of tract No. 27 of Mr. Strong's land and that of the aforesaid tract No. 7 conveyed by the State to James Peacock. The former is designated merely by a lot number, while the latter is described by metes and bounds. However, the first contains .83 of an acre, while the second contains .80 of an acre, so presumably, the same land is described, only in different terms. Besides, the abstracter certifies (Supplement, p. 2) that he has made a diligent search of the records pertaining to the "Ministerial Lands" in the State Auditor's Office, and that they reveal that the State does not claim ownership of any lands in said Section 29 which Mr. Strong claims to own. Mr. Strong, on the other hand, submits an affidavit showing that he has had adverse possession of said tract No. 27 since 1901. Hence, with the State making no claim to the title, Mr. Strong has, at least by adverse possession, a sufficient title to said tract No. 27.

The original abstract failed to show that the deed from The Zaleski Com-

pany's Receiver to Messrs. McClintick and Strong (Abstract, p. 849) was acknowledged. Reference to the County records shows that said deed was properly acknowledged. (See p. 7 of Supplement).

The original abstract showed, too, that Mr. Strong had made a coal lease on October 15, 1920, with reference to some of the land in the State deed, to Benjamin F. Wills, and that on December 1, 1920, Mr. Wills executed to Mr. Strong a quit claim deed covering the same land, but it did not show that the grantor had signed the quit claim deed, nor that it had been witnessed. On page 1291 of the abstract, the abstracter has subsequently inserted a notation indicating that said quit claim deed was, in fact, signed and witnessed.

On August 3, 1907, Mr. Strong made an oil and gas lease to The Southern Ohio Gas Company (Abstract, p. 1306). The original abstract did not show that this lease had ever been surrendered. However, said lease contained a provision that:

"In case no well is completed upon said premises within one year from this date, then this grant shall become null and void, and if after the completion of such well, said second party shall at any time fail for a period of six months to operate an oil or gas producing well on said premises then this grant shall become null and void."

According to an affidavit submitted by Mr. Strong, The Southern Ohio Gas Company did not take possession of the premises described in said lease and did not drill any well thereon within the year mentioned therein or at any time thereafter. Hence, said lease has become null and void by its own terms.

On October 20, 1915, Mr. Strong executed to The Logan Natural Gas and Fuel Company an oil and gas lease (Abstract, p. 1326) covering some of the land to be conveyed to the State. Supplemental information now shows that The Logan Natural Gas and Fuel Company later assigned all of its rights in said lease to The Ohio Fuel Gas Company and to The Preston Oil Company (Supplement, p. 8 and p. 11), also that the latter two companies, on February 11, 1931, surrendered and cancelled said lease which had been granted by Mr. Strong to The Logan Natural Gas and Fuel Company (Supplement, p. 16). Hence, said encumbrance is removed.

The reference in the proposed deed to the lots in the village of Zaleski has been correctly changed to show that the lots enumerated in the State deed are numbered according to the renumbering made of the lots in said village on January 31, 1877.

It was pointed out in the former opinion that the taxes for the second half of 1930 and all of the taxes for 1931 are now a lien upon the property.

The new draft of the proposed deed to the State of Ohio is in proper form for the conveyance of a fee simple title, with release of dower.

I am sending to you said abstract of title, the affidavit of Mr. Strong and the original draft and the new draft of the proposed deed to the State. I might add that the original deed was never signed or executed, but that the new deed is signed and properly executed.

Respectfully,

GILBERT BETTMAN,
Attorney General.