

6490.

DISCUSSION OF CERTIFICATES OF TITLE, ETC., TO LAND  
IN SUMMIT COUNTY FOR CONSTRUCTION OF NIMISILA  
CREEK BASIN RESERVOIR.

COLUMBUS, OHIO, December 8, 1936.

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

DEAR SIR: You recently submitted for my examination and approval certificates of title, warranty deeds and contract encumbrance record No. 13, relating to the title of Lots 11 and 12 in C. C. McCue's Little Farms Allotment, situated in Green Township, Summit County, Ohio, and recorded in Plat Book 36, page 7, in the Office of the Recorder of Summit County, Ohio, which the state of Ohio proposes to purchase of one Arnold D. Couch for the use of your department in the construction of the Nimisila Creek Basin Reservoir.

Upon examination of the certificates of title submitted to me, which certificates of title were executed by The Northern Ohio Guarantee Title Company under date of March 24, 1936, it appears that as of said date and as shown by said certificates of title Lot No. 12 in said allotment above referred to was owned of record by Arnold D. Couch while one Augusta M. McCue was the owner of record of Lot No. 11 in this allotment. And I find that as of said date, to wit, March 24, 1936, Augusta M. McCue and Arnold D. Couch respectively, owned and held said Lots 11 and 12 by fee simple title free and clear of all encumbrances subject to the following exceptions here noted:

1. It appears that on August 14, 1901, one Charles A. Smith who then owned and held an 80-acre tract of land in the northwest quarter of Section 19 in said township, which tract of land included the smaller parcels now known and described as Lots 11 and 12 in McCue's Little Farms Allotment, executed a warranty deed to The Canton, Massillon and Akron Railroad Company in and by which in consideration of the sum of \$400.00 paid to him, said Charles A. Smith, his wife, Matilda Smith, joining with him in the instrument, conveyed to said company a strip of land sixty feet wide extending from north to south through the length of the 80-acre tract of land then owned by him. It may be that the intent and purpose of the parties in making and in accepting this conveyance was that the same was to be used only for railroad right of way purposes. However, this deed, as the same has been abstracted in the certificates of title submitted to me, indicates that this strip of land was conveyed to said rail-

road company by full fee simple title without any conditions or reservations affecting such title; and inasmuch as this 60-foot strip of land extends through said Lots 11 and 12 as they were afterwards laid out from east to west through this 80-acre tract of land, it appears from the certificates of title that a small parcel of each of these lots is owned by said railroad company. This matter should be investigated by you or by your authorized representatives before the transaction for the purchase of these lots is closed by the issuance of vouchers and warrants covering the purchase price of the lots. In this connection, I am inclined to the view that further investigation will show an abandonment of this strip of land for railroad right of way purposes and that said railroad company has, perhaps, lost its legal title in and to this strip of land. However this may be, your duty to develop such additional facts as may be presented with respect to the present title of this 60-foot strip of land is clear.

2. On November 13, 1908, said Charles A. Smith, being the owner of said 80-acre tract of land in which Lots 11 and 12 of McCue's Allotment are now situated, executed a right of way deed or easement in and by which he granted to The Tide Water Pipe Company, Limited, and to its successors and assigns the right to lay and maintain pipe lines in and upon and through said 80-acre tract of land and likewise to erect thereon a telegraph line with the provision that the telegraph poles carrying the wires should be set on the fence lines of said property. I am not advised by the certificates of title submitted to me as to what, if anything, has been done by The Tide Water Pipe Company, Limited, or by any of its successors or assigns under the right of way easement granted to this company for the purposes above indicated. What, if any, pipe lines or telegraph lines there may be in or upon this property and the manner in which said pipe lines and telegraph lines, if any, will affect the use of the property here in question for its intended purpose, is a matter that can be determined by you from the survey which your engineers have made in connection with the Nimisila Creek Basin Reservoir improvement.

3. On March 16, 1907, said Charles A. Smith, as the owner of the 80-acre tract of land above referred to, executed a deed to one Charles E. Wise in and by which there was granted to said Charles E. Wise the right by way of easement to construct a telephone line along the westerly line of said tract of land, said right of way to be along the highway on the west line of the grantor's premises and along the east side of the highway. If this telephone line has been constructed, I assume that the plats which you have on hand with respect to this property will indicate this fact and that from this information you will know how far this encumbrance will affect the use that you desire to make of the property.

4. On August 16, 1928, it appears that one C. Clifton McCue and Augusta M. McCue, as owners of the 80-acre tract of land above referred to, in which Lots 11 and 12 of the McCue's Allotment are now situated, executed an oil and gas lease to The East Ohio Gas Company on said 80-acre tract of land for a term of five years and for so much longer as oil or gas or their constituents might be found on said premises. The certificates of title do not contain any information as to what, if any, developments have been made by The East Ohio Gas Company under this lease. I assume, in this connection, that the survey which you have made of this property for reservoir purposes will give you the desired information as to these facts.

5. On November 19, 1930, Arnold D. Couch, being then the owner of record of said Lot No. 12 in C. C. McCue's Little Farms Allotment, executed a deed to The East Ohio Gas Company in and by which said company was given the right to lay down and maintain a pipe line for the transportation of gas in and upon said tract of land and likewise to erect and maintain thereon a telegraph and telephone line. As in the other cases above noted, there is nothing in the abstract to show what, if anything, has been done by the grantee in this deed under the easement granted to it. As in the other cases, your survey probably shows the facts as to this matter. In this connection, it may be further noted that either in this deed or in another deed executed upon the same date said Arnold D. Couch assumed to grant to said The East Ohio Gas Company a right of way for pipe line and for telegraph and telephone line purposes in and over Lot No. 11 of C. C. McCue's Little Farms Allotment; although as to this, the certificate of title covering said Lot 11 of C. C. McCue's Little Farms Allotment does not otherwise show that Arnold D. Couch owned and held said Lot 11 at the time this deed was executed.

6. It appears from the certificate of title relating to Lot No. 12 in C. C. McCue's Little Farms Allotment that on December 30, 1930, Arnold D. Couch, being then the owner of record of said lot, executed a warranty deed to one G. H. Chenoweth in and by which he conveyed to said grantee an undivided one-half interest in all of the oil and gas in, on and underlying said Lot No. 12 of C. C. McCue's Little Farms Allotment; and that thereafter on April 6, 1931, G. H. Chenoweth by warranty deed conveyed his undivided one-half interest in and to the oil and gas in and under said Lot 12 of C. C. McCue's Little Farms Allotment to one Garnette Singer who, apparently, now owns and holds an undivided one-half interest to the oil and gas in and under said Lot 12 in C. C. McCue's Little Farms Allotment.

7. On November 1, 1934, Arnold D. Couch and Beatrice Couch, his wife, executed a mortgage deed to the Home Owners' Loan Corporation on said Lot 12 of C. C. McCue's Little Farms Allotment to secure

the payment to said Home Owners' Loan Corporation of a promissory note of even date therewith in the sum of \$3200.00. There is nothing in the certificate of title covering this lot which shows that this mortgage has ever been canceled or released and this mortgage is a lien upon this tract of land to the extent of the amount of money remaining unpaid upon the promissory note secured by the mortgage, together with accrued interest thereon. Needless to say, arrangements should be made by you or your representatives with said mortgagors and the mortgagee above named to the end that this mortgage may be released and canceled before the transaction for the purchase of this lot is closed by your department.

8. It appears that on March 28, 1934, at which time Lot No. 11 of C. C. McCue's Little Farms Allotment was owned and held of record by C. C. McCue and Augusta McCue, an execution was issued out of the Municipal Court of Cleveland, Ohio, against C. C. McCue and Augusta McCue in and for the sum of \$360.00 and costs amounting to the sum of \$4.50 and that upon said date the Sheriff of Summit County levied this execution upon Lot No. 11 in C. C. McCue's Little Farms Allotment. It does not appear that this execution or the judgment upon which the same was issued has been paid or otherwise satisfied, and the same is a lien upon said Lot 11 to the amount remaining unpaid upon said judgment and execution, together with interest and costs thereon. Arrangements should, of course, be made for the payment and satisfaction of this judgment and execution before the transaction is closed for the purchase of this property.

9. It appears further in this connection with respect to Lot 11 in C. C. McCue's Little Farms Allotment that on March 29, 1932, The Real Estate Mortgage Company recovered a judgment against Augusta M. McCue and others as defendants in the sum of \$971.88, plus interest and costs, together with a decree for the foreclosure of a mortgage on premises other than said Lot 11 in C. C. McCue's Little Farms Allotment and that thereafter on August 24, 1934, an execution was issued on this judgment to the Sheriff of Summit County who on August 25, 1934, levied said execution in the amount above mentioned on Lot 11 of C. C. McCue's Little Farms Allotment. This execution is a lien upon this lot to the amount of money remaining unpaid thereon and upon the judgment upon which the execution was issued. In other words, it appears that this execution for the sum of \$971.88, plus interest thereon, together with costs in the amount of about \$8.90, is a lien upon this lot and should be paid or otherwise satisfied before you close the transaction for the purchase of this property.

10. It appears from the certificate of title covering Lot No. 11 in C. C. McCue's Little Farms Allotment that in 1926 an assessment was

made against said lot for the improvement of the South Main Street Road, which assessment is payable in twenty semiannual installments of \$10.40 each, beginning December 20, 1926. This assessment is a lien on said Lot 11 to the full amount thereof less the semiannual installments which have been paid thereon. It does not affirmatively appear from the certificate of title that any of the semi-annual installments of this assessment have been paid. The certificate sets out the status of said assessments as follows:

“Delinquent assessments of former years and penalty, amounting to \$201.00, are a lien. Assessments for the first half of 1934, amounting to \$10.40, are delinquent; penalty \$1.04. Assessments for the last half of 1934, amounting to \$10.40, are delinquent; a penalty of 10% will be added to this amount. Assessments for 1935 and thereafter are unpaid.”

Needless to say, proper arrangements should be made for the payment of the total amount of this assessment, less only such amount as has been paid thereon, before the transaction for the purchase of this lot is consummated.

11. It further appears from the certificate of title covering said Lot 11 of C. C. McCue's Little Farms Allotment that there are delinquent taxes of former years and penalties thereon assessed against this property in the amount of \$41.70. In addition to this, taxes for the first half of 1934, amounting to \$2.69, are delinquent, penalty \$.27; taxes for the last half of 1934, amounting to \$2.69, are delinquent, together with the legal penalty thereon. It appears further that the taxes for the year 1935 are unpaid and are a lien upon the property. In addition to this, the taxes for the year 1936 are a lien upon the property. A check on these taxes should be made in the office of the Treasurer of Summit County and arrangement should be made for the payment of both delinquent and current taxes before the purchase of this lot is consummated.

12. It appears from the certificate of title covering Lot No. 12 in C. C. McCue's Little Farms Allotment that some time in the year 1926 an assessment was levied against this lot payable in twenty annual installments of \$10.72 each beginning on December 20, 1926. It appears that some of the semiannual installments of the assessment on this lot have been paid and the status of said assessment is set out in the certificate of title as follows:

“Assessments for the first half of 1934, amounting to \$10.72, are delinquent; penalty \$1.07. Assessments for the last half of 1934, amounting to \$10.72, are delinquent; a penalty of

10% will be added to this amount. Assessments for 1935 and thereafter are unpaid.”

A check should be made in the office of the County Treasurer of Summit County with respect to the assessment on this lot which was levied for the improvement of the South Main Street Road. An arrangement should be made for the payment of the whole amount of the amount remaining unpaid on this assessment before the transaction for the purchase of this property is closed by you.

13. It further appears from the certificate of title covering Lot No. 12 in C. C. McCue's Little Farms Allotment that the taxes upon this lot for the first half of 1934, amounting to \$12.73, are delinquent and that a penalty has been assessed upon this amount in the sum of \$1.27. Taxes for the last half of 1934, amounting to \$12.73, are delinquent, against which a penalty will be assessed. The taxes for the year 1935 are unpaid and are likewise a lien upon the property as are the undetermined taxes for the year 1936. The amount of the delinquent and current taxes on this lot should be ascertained by a check made for this purpose in the office of the county Treasurer of Summit County and arrangements should be made for the payment of the same before closing the transaction for the purchase of this property.

As before noted, the certificates of title covering Lots 11 and 12 of C. C. McCue's Little Farms Allotment were executed under date of March 24, 1936. In this situation, it is suggested that a representative of your office, acting either independently or with Mr. Joseph Thomas, attorney at law at Akron, Ohio, check the title to both of these lots with respect to any transactions that may have occurred since March 24, 1936, which may affect the title to either or both of these lots.

As noted above, the certificate of title covering Lot 11 of C. C. McCue's Little Farms Allotment shows that as of the date of the execution of this certificate, to wit, March 24, 1936, said lot was owned of record by one Augusta M. McCue. As a part of the files relating to the title to this lot, that is, Lot No. 11 in C. C. McCue's Little Farms Allotment, there has been submitted to me a warranty deed executed under date of October 1, 1936, by Augusta M. McCue, as executrix of the estate of C. Clifton McCue, which conveys this lot to Arnold D. Couch for a consideration therein stated in the amount of \$1137.64. By this deed, which has been properly executed and acknowledged, said Lot 11 in C. C. McCue's Little Farms Allotment is conveyed to Arnold D. Couch by fee simple title with the covenant that the same is free and clear of all encumbrances whatsoever except taxes and assessments payable in June, 1927, and thereafter. Obviously, this covenant contained in the deed executed by Augusta M. McCue, as executrix of the estate of C. Clifton

McCue, to Arnold D. Couch, does not affect the other liens on Lot No. 11 of C. C. McCue's Little Farms Allotment, above noted, and said liens still stand against this property unless they have since been paid off or otherwise satisfied by Augusta M. McCue individually or as executrix of the estate of C. Clifton McCue or by someone for her.

Separate warranty deeds have been tendered by Arnold D. Couch conveying Lots Nos. 11 and 12, respectively, in C. C. McCue's Little Farms Allotment to the state of Ohio for the considerations of \$900.00 and \$5100.00, respectively. These deeds which bear date of October 2, 1936, have been properly executed and acknowledged by said Arnold D. Couch and by Beatrice Couch, his wife; and the form of these deeds is such that each of them is legally sufficient to convey these several lots to the state of Ohio by fee simple title with covenants of warranty that said lots thereby conveyed to the state are free and clear of all encumbrances whatsoever. I assume from these covenants that the liens and charges on these lots above noted are to be paid out of the purchase price of the property.

Contract encumbrance record No. 13, which covers both Lots 11 and 12 in C. C. McCue's Little Farms Allotment, has been properly executed and the same shows a sufficient unencumbered balance in the appropriation account to the credit of your department for the purchase of lands in the Nimisila Creek Basin, to pay the purchase price of said lots which is stated in said contract encumbrance record as \$900.00 for said Lot 11, and \$5100.00 for said Lot 12. It further appears that the purchase of this property has been approved by the Controlling Board and that the money necessary to pay the purchase price of this property has been released for this purpose. I am herewith enclosing said certificates of title, warranty deeds and other files submitted to me in this matter, for your further consideration before the transaction for the purchase of this property is closed by your department.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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6491.

APPROVAL—BONDS OF CLYDE EXEMPTED VILLAGE  
SCHOOL DISTRICT, SANDUSKY COUNTY, OHIO, \$35,-  
000.00.

COLUMBUS, OHIO, December 9, 1936.

*Industrial Commission of Ohio, Columbus, Ohio.*