

3072.

APPROVAL, ABSTRACT OF TITLE TO LAND OF JACOB ROBINS AND SARAH ROBINS IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, March 21, 1931.

State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval an abstract of title of a certain parcel of land and the appurtenances thereunto belonging, situated in the city of Columbus, Franklin County, Ohio, and being more particularly described as thirty-one feet east and west by ninety feet north and south out of the northwest corner of Inlot No. 126 in said city, as the same is numbered and delineated on the recorded plat thereof of record in Deed Book "F," page 332, Recorder's Office, Franklin County, Ohio.

Upon examination of said abstract of title, I find that Jacob Robins has a good and indefeasible fee simple title to the above described property, free and clear of all incumbrances except the following: On November 16, 1922, the said Jacob Robins, his wife, Sarah Robins, joining with him in the conveyance, executed a mortgage deed to the above described premises to The Prudential Insurance Company of America to secure the payment of a certain promissory note of even date therewith for the sum of thirty thousand dollars. By the terms of said note the principal sum of said note, together with the interest thereon, was to be paid on the 16th day of November, 1927. Said note was not paid at the time provided therein and on the 8th day of November, 1927, an extension was granted on said mortgage indebtedness, by the terms of which extension the balance then due on said mortgage, to wit, the sum of twenty-two thousand dollars, was to be paid by the 16th day of November, 1937, together with interest thereon at the rate of 5½% per annum. In and by the agreement for said extension said Jacob Robins and Sarah Robins, his wife, extended the operation of said mortgage as a first lien upon said premises for the purpose of securing the payment of said note and the interest thereon.

The mortgage above referred to, which is recorded in Mortgage Record No. 607, at page 540, is a lien upon the real property above described and the buildings and other appurtenances thereunto belonging, to the extent of the amount of money remaining unpaid upon the promissory note secured thereby. This mortgage note should be paid off and the mortgage released before the transaction for the purchase of this property by the state is closed.

As a further exception to the title of said Jacob Robins in and to the above described property, it is noted that under date of June 29, 1926, said Jacob Robins and Sarah Robins, his wife, executed to one Harry Gilbert a lease upon the above described premises for the term of ninety-nine years, renewable forever, which lease was thereafter on the 12th day of July, 1926, assigned by said Harry Gilbert and by Fannie Gilbert, his wife, to The Broad Front Realty Company, a corporation under the laws of Ohio, which company is now the owner and holder of said lease.

Before the transaction for the purchase by the state of Ohio of the title and interest of said Jacob Robins, the owner of the fee, is closed the state should obtain from The Broad Front Realty Company a quit claim deed properly executed conveying to the state all of its right, title and interest to said property.

As a further exception to the title of the fee owner in and to the property

here in question, it is noted that under date of August 11, 1926, The Broad Front Realty Company, the owner of the perpetual leasehold interest in and to said property, executed a lease to one Abe Schusterman, by which instrument there was leased and demised to the lessee therein named the storeroom and basement in said premises for a term commencing on the 1st day of October, 1927, and ending on the 31st day of May, 1931. There is nothing in the abstract to indicate that this lease has been released and I assume that the same is still in full force and effect. Before the deal is closed for the purchase of this property by the state a release of the rights of the lessee under this lease should be secured from him.

It is further noted that under date of October 1, 1927, The Broad Front Realty Company executed a certain lease to the Columbus Council Boy Scouts of America, by which instrument there was leased and demised to said organization the entire third floor of the premises here under investigation, the same to be used for office and assembly room purposes. This lease is one for a term of five years beginning on the 1st day of October, 1927, and ending on the 30th day of September, 1932. Before closing the transaction for the purchase of the property here in question from the owner of the fee or from the owner of the perpetual leasehold therein, a release of the rights of the Columbus Council Boy Scouts of America, under the lease above referred to, should be obtained.

As a further exception to the title to said property here under investigation, I note that under date of December 16, 1927, The Broad Front Realty Company executed a lease to The Columbus Bill Posting Company, by which instrument there was leased and demised to said lessee for a term of ten years ending on the 31st day of December, 1937, the entire roofs of the buildings located on said premises.

From the abstract it appears that The Broad Front Realty Company, as the lessor in said lease, has the right and option to declare said lease void on ninety days' notice to the lessee in the event of a sale of said property, but that said option can be exercised only in case the buildings on said property are razed.

Before the state issues its warrant for the purchase of the property here in question, you should be satisfied that the state will not be embarrassed by any claims of The Columbus Bill Posting Company under this lease; and if it is possible to do, a release should be obtained from said company of its rights under this lease.

On March 5, 1931, one Henry E. Musselman, as plaintiff, filed an action for money against said Harry Gilbert and The Broad Front Realty Company, in which action the amount claimed is the sum of three thousand one hundred and fifty dollars. This action does not constitute a lien upon the interests of The Broad Front Realty Company in and to this property, but any judgment which may be obtained by the plaintiff against The Broad Front Realty Company in the above entitled action will be a lien upon the interests of The Broad Front Realty Company in and to said property.

The same can be said with respect to a certain action which on March 5, 1931, was filed by The Huntington National Bank of Columbus, as trustee under the will of Horace W. Campbell, vs. said Harry Gilbert and The Broad Front Realty Company. This action is one for money in the sum of two thousand six hundred and twenty-five dollars.

When the time comes to close the transaction for the purchase of the property here in question and to issue the warrant of the state covering the

purchase price of said property, a check of the court proceedings in the above entitled cases should be made in order to ascertain whether any judgments against The Broad Front Realty Company have been taken in said cases.

The taxes for the year 1930, amounting to one thousand three hundred twenty-three dollars and sixty-eight cents, are unpaid and are a lien upon said property.

There is likewise a balance of one hundred eighty dollars and eighty-six cents still due on the assessment on said property for the improvement of Broad Street. This assessment is likewise a lien upon the property.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3073.

APPROVAL, LEASE FOR RIGHT TO TAKE WATER FROM OHIO AND
ERIE CANAL IN CUYAHOGA COUNTY, OHIO—THOMAS WILSON.

COLUMBUS, OHIO, March 21, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate, executed by you as superintendent of public works on behalf of the state of Ohio, by which there are leased and demised to one Thomas Wilson of Bedford, Ohio, in consideration of an annual rental of two hundred dollars to be paid by him, the right to take from the level of the Ohio and Erie canal above Lock 37, in Cuyahoga County, so much of the surplus water introduced into the level of said canal as may not be needed for the lockage of boats and which is not now leased for manufacturing purposes, and also the right to use and occupy a parcel of canal land described in said lease for the purpose of enabling the above named lessee to use and enjoy the water power so leased.

The term of said lease, both with respect to the use of the water therein granted and the use and occupation of said parcel of land, is five years.

In this connection, it is noted that the lease of the parcel of land above referred to is made wholly as an instant to the lease of said water power, and that said grantee is given the right to use and occupy said parcel of land solely for the purpose of enabling him to use such water power. This fact is specifically mentioned for the reason that otherwise you would have no authority to lease canal lands for a term of five years.

Some question is suggested on consideration of the provisions of said lease as to whether the same are sufficiently certain with respect to the amount of water that the lessee is to be permitted to take under said lease. As to this, however, I am inclined to the view that inasmuch as the lessee is limited to the use of surplus water which may be introduced into the level of said canal at the point above indicated, which surplus water would otherwise flow from the canal, the suggested objection is obviated, and that said lease, considered as