

education and then ordered reopened by mandamus proceedings would be entitled to participate in the State Public School Fund.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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635.

APPROVAL — CERTIFICATE OF TITLE AND WARRANTY DEED EXECUTED BY THE NORTHERN OHIO GUARANTEE TITLE COMPANY AND RELATING TO CERTAIN PROPOSED PURCHASE OF LANDS IN GREEN TOWNSHIP, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, May 22, 1937.

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

DEAR SIR: You have submitted for my examination and approval certificate of title No. 36,859 executed by The Northern Ohio Guarantee Title Company under date of February 26, 1937, warranty deed and contract encumbrance record No. 28, relating to the proposed purchase by the State of Ohio for the use of your department in the construction of the Nimisila Creek Basin Reservoir of a parcel of land which is owned of record by one Emma F. Hughes in Green Township, Summit County, Ohio, and which is more particularly described as being Lot No. 17 of C. C. McCue's Little Farms Allotment in the west half of the northwest quarter of Section 19 in said township, as surveyed by S. G. Swigart and Son, and as recorded in Plat Book 36, page 7, of Summit County Record. Said lot as described is subject to all legal highways and there is excepted and reserved therefrom a right of way through said land conveyed to The Canton, Massillon and Akron Railroad Company by deed dated August 14, 1901, and recorded in Vol. 273, page 613, of the Deed Records of Summit County, Ohio.

As previously pointed out to you in opinions on the title to other lots in C. C. McCue's Little Farms Allotment which you have acquired in connection with the project above referred to, the exception from said lot as the same is described of a right of way through the same is that granted to The Canton, Massillon and Akron Railroad Company by Charles A. Smith and wife under the above mentioned date,

which right of way, sixty feet in width, extended from north to south through the whole of an eighty-acre tract of land which was then owned by Charles A. Smith and which was later acquired by C. C. McCue for allotment purposes subject to the reservation with respect to said right of way. I am advised that the land included within this right of way, extending as it does through the lot here in question, is now owned by The East Ohio Gas Company and that you expect to deal with said company in the acquisition of this land for purposes of the project above referred to.

The title to this lot now owned by Emma F. Hughes is subject to certain exceptions likewise noted in opinions heretofore referred to you with respect to other lots in C. C. McCue's Little Farms Allotment, to wit, the easement that was granted by Charles A. Smith to one Charles E. Wise in and by which the grantee was given the right to construct a telephone line along the west side of said eighty-acre tract of land which included the land now comprised within Lot No. 17 here under investigation. This easement for the construction of said telephone line was along the highway on the westerly line of the grantor's premises and along the easterly side of said highway. This easement is an encumbrance upon the property; but inasmuch as you are doubtless familiar with the facts in regard to this easement and with respect to any telephone line construction pursuant to the same, I do not deem it necessary to discuss this exception further. The same observation may be made with respect to a right of way easement which was granted by C. A. Smith to The Tide Water Pipe Company, Limited, under date of November 13, 1908. By this instrument The Tide Water Pipe Company, Limited, its successors and assigns, were given the right to lay and maintain pipe lines and a telegraph line over and through the eighty-acre tract of land then owned by Mr. Smith. You are doubtless familiar with the facts relating to this easement and of the improvements made by The Tide Water Pipe Company, or its assigns under the same. And I am here noting the same simply for the reason that in point of law the same is an encumbrance upon the property.

In addition to the exceptions above mentioned, I note that under date of December 12, 1930, Emma F. Hughes, then as now the owner of the property here in question, executed an instrument in deed form in and by which she granted to The East Ohio Gas Company the right to lay, maintain and operate a pipe line for the transportation of gas and kindred products over and through this tract of land. I am not advised by the certificate of title or from any other information at hand what, if any, operations were conducted by The East Ohio Gas Company pursuant to this easement in the way of pipe line construction in and upon said land. However, the easement in

and of itself is an encumbrance and is here noted as an exception to the title.

As a further exception to the title in and by which Emma F. Hughes owns and holds this land it is noted that under date of July 5, 1930, she executed to one Arthur L. Smith an oil and gas lease on a seven-acre tract of land which doubtless includes the property here under investigation. By this lease the grantee was given the right to drill for oil or gas on said premises for such period of time as these products might be found in paying quantities. It appears from the certificate of title that the interest of Arthur L. Smith in and to this oil and gas lease has been assigned and reassigned by fractional interests therein to various parties and that now the major interest in the rights of Arthur L. Smith under this oil and gas lease is now owned and held by Columbian Carbon Company with outstanding fractional interests therein as follows: The Exchange Bank Company, 6/128; Fred H. Kline, 4/128. This outstanding oil and gas lease by reason of the diverse interests in and by which the same is now held may present some practical difficulties other than might be the case if this oil and gas lease were owned and held by The East Ohio Gas Company. And this outstanding oil and gas lease is here called to your attention as an encumbrance upon the land for such attention as you may desire to give to the matter in connection with the acquisition of the above described property for this reservoir project.

It appears from the certificate of title that the taxes on the above described lot for the year 1936, the amount of which is not stated, are unpaid and are a lien upon the property. It may be further observed in this connection that the undermined taxes for the year 1937 are now likewise a lien upon the property.

Subject to exceptions above noted, I find that Emma F. Hughes has a good and indefeasible fee simple title to the above described tract of land.

Upon examination of the warranty deed tendered by Emma F. Hughes, I find that the same has been properly executed and acknowledged by said grantor, an unmarried woman, and that the form of this deed is such that the same is legally sufficient to convey to the State of Ohio, the grantee therein named, the above described lot by fee simple title, subject to all legal highways affecting the premises and excepting and reserving from said lot the right of way to The Canton, Massillon and Akron Railroad Company above referred to. It is noted further, in this connection, that said above described premises are conveyed to the State of Ohio subject to an exception or reservation which is stated in this deed as follows: "Excepting and reserving from the above described premises to the owners of said premises, their heirs, executors, administrators and assigns all of the

natural gas and oil rights." This reservation in the deed is called to your attention for the reason that the same may present some practical difficulties with respect to the use that you may desire to make of the above described parcel of land in connection with this project. As above noted, these premises are subject to an oil and gas lease executed by Emma F. Hughes to Arthur L. Smith and I assume that what she is now reserving in this deed is her right to royalties for oil and gas produced on the premises under this lease. However this may be, your attention is called to this matter for such attention as may be necessary in connection with the use that you desire to make of this parcel of land in connection with the Nimisila Reservoir project.

Contract encumbrance Record No. 28, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and the same shows a sufficient balance, otherwise unencumbered, in the appropriation account to the credit of your department to pay the purchase price of this property, which purchase price is the sum of \$6,000.00.

I further note from the recitals contained in this contract encumbrance record that the purchase of this property in connection with the reservoir project above referred to has been approved by the Controlling Board.

Subject to the exceptions and observations above mentioned, the certificate of title and warranty deed are approved and the same, together with said contract encumbrance record, are herewith returned to you for further attention in closing the transaction for the purchase of this property.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*