

116.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN GOSHEN TOWNSHIP, TUSCARAWAS COUNTY, OHIO, BEING A PART OF THE SCHOENBRUN TRACT.

COLUMBUS, OHIO, March 1, 1927.

*The Ohio Archeological and Historical Society, Ohio State University, Columbus, Ohio.*

GENTLEMEN:—Examination of an abstract, deed and encumbrance estimate submitted for my examination and approval, discloses the following:

The abstract under consideration was prepared by Mrs. Jessie B. Axx, under date of December 8, 1926, and pertains to the following premises situate in the township of Goshen, county of Tuscarawas and State of Ohio, and being a part of Lot No. 82 of J. C. Adair and C. A. Leech's Sub-Division of a part of Lots numbered 7, 8 and 9 of the Schoenbrun Tract, as recorded in Plat Book No. 5, pages 37 and 38 in the Recorder's Office of Tuscarawas county, and more particularly described as follows:

Beginning at a stake at the southwest corner of the above mentioned Lot No. 82, thence along the west line of Lot No. 82, north 14° 15' east 325.5 feet to a post; thence leaving said west line north 87° 57' east 561.5 feet to a stake; thence south 14° 55' west 488 feet to a stake on the north line of Wills Avenue; thence along the north line of Wills Avenue north 75° west 532.4 feet to the place of beginning, containing 4.99 acres.

Upon examination of the abstract, I am of the opinion that the same shows a good and merchantable title to the premises in H. P. Copeland, Martha M. McDivitt and James McDivitt, trustees of the estate of John McDivitt, deceased, subject to the following exceptions:

1. In Section 26 of the abstract, it appears that Francis M. Wills, on January 10, 1896, granted an interest in the land to The Central District & Printing Telegraph Company for the purpose of permitting said company to construct, operate and maintain its lines over and along property owned by Mr. Wills, including the necessary poles and fixtures along the roads, streets or highways adjoining the property, together with the right to set the necessary guy and brace poles and attach to trees the necessary wires. This lease encumbrance has never been released.

2. In Section 28 in the deed from Francis M. Wills and wife to John McDivitt under date of March 28, 1907, the deed was made subject to the conditions for the benefit of the grantors, and their heirs and assigns, being the owners of other lands fronting on the public road, on which said lot abuts, that no building shall be erected or maintained on said premises nearer than 50' to said public road.

3. The taxes for 1926 are a lien and unpaid.

It is suggested that the committee, acting in the matter of this Schoenbrun tract, determine how far, if at all, the grant to the Central District & Printing Telegraph Company, and the restriction in favor of Francis M. Wills and wife, their heirs and assigns, will interfere with the use of the premises by the state of Ohio.

The encumbrance estimate submitted bears No. 1558, is addressed to the John McDivitt Estate and is properly certified by the Director of Finance under date of February 1, 1927, and signed by F. W. Garver, chairman of the committee. The said estimate is for \$2,245.50, which is within the amount appropriated, and otherwise unexpended.

The warranty deed by the trustees has already been executed, and appears to

be in proper form to convey the title of the premises under consideration when properly delivered.

I am herewith returning the deed, abstract and other papers to you.

Respectfully,

EDWARD C. TURNER.

*Attorney General.*

117.

MUNICIPAL COUNCIL—WITHOUT AUTHORITY TO APPOINT COUNCILMEN WHEN CITY HAS BEEN REDISTRICTED.

*SYLLABUS:*

*Where, under authority of Section 4212 of the General Code, a city is redistricted and the number of wards therein is increased, the council is without authority to appoint councilmen to serve for the new wards so created. Such redistricting does not become effective until the next regular municipal election.*

COLUMBUS, OHIO, March 1, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication, as follows:

“The Bureau is in receipt of a letter from the city solicitor of Mansfield, which reads:

‘Recently the city of Mansfield annexed new territory, which territory has a population of close to two thousand. The city council then, under the law, redistricted the city into wards increasing the number thereof from four to six and thereby adding two councilmen to the present number. In the annexed territory which goes into the two new wards, there is also added to each of these two new wards a portion of two of the old wards. The city council has the idea that probably they can appoint councilmen for these two new wards. I am inclined to believe that they must be elected from the new wards and think that my opinion is in line with Opinion Number 2343, February 6, 1922, which states:

“The addition of councilmen provided by Section 4206 G. C. to meet the requirements of the increase in population in municipalities must in accordance with the provisions of Section 4212 G. C. be elected at a regular municipal election by the electors of the re-districted wards created previously by council.”

Will your office be kind enough to let us have your opinion as to whether these councilmen should be elected or may council appoint them to fill vacancies?’

Your views in this connection will be appreciated.”

The redistricting of the city into wards in the present instance was accomplished pursuant to the same statutory authority as was applicable to redistricting under consideration in the former opinion of this department, to which the solicitor refers. That authority is found in Section 4212 of the General Code, which is as follows: