165.

APPROVAL, BONDS OF EDISON VILLAGE SCHOOL DISTRICT, MORROW COUNTY, $17,000, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, March 20, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

166.

SCHOOL LAND—LACK OF WORDS OF SUCCESSION IN A DEED TO BOARD OF EDUCATION DOES NOT DEFEAT THE TRANSFER OF FEE SIMPLE ESTATE—SPECIFIC CASE PASSED UPON.

SYLLABUS:

Under the deed considered in this opinion, the grantee, the board of education, may sell and convey the premises therein described. Lack of words of succession in the deed to the board does not defeat the transfer of a fee simple estate. The use of the following words in the habendum clause, to-wit, "unto said board of education so long as they want the same for a school house site to them and their own proper use and behoof", does not constitute a condition subsequent or ingraft a limitation upon the title.

COLUMBUS, OHIO, March 21, 1923.

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—Yours of recent date received, with which you enclose a copy of a deed to the Henrietta Township board of education, of your county, and with reference thereto submit the following question:

> "Can the Board of Education sell this building or grounds, or both, to other persons who will devote it to other than school purposes, and use the proceeds for school purposes?"

Your question necessitates an analysis and consideration of the pertinent parts of the deed in question.

The granting clause of the deed reads as follows:

> "To all persons to whom these presents shall come, Greeting: Know Ye, that I, E. S. Haynes, of Henrietta, O., for the consideration of Eighty Dollars received to my full satisfaction of the Board of Education of said Henrietta by the hand of H. M. Veits do give, grant, bargain, sell and confirm unto said Board the following described tract or lot of land situate in the Township of Henrietta in the County of Lorain and State of Ohio, to-wit:"

(Then follows description of land containing one acre.)

"To Have and To Hold the above granted and bargained premises, with the appurtenances thereof, unto said Board of Education so long as they want the same for a school house site to them and their own proper use and behoof. And also I the said E. S. Haynes do for myself, my heirs, executors and administrators, covenant with the said Board that at and until the ensealing of these presents I am well seized of the premises as a good and indefeasable estate in fee simple and have good right to bargain and sell the same in manner and form as above written, and that the same is free from all incumbrances whatsoever.

'And furthermore I, the said E. S. Haynes, do by these presents bind myself and my heirs forever to warrant and defend the above granted and bargained premises to said Board against all lawful claims and demands whatsoever. And I, Martha Haynes, wife of said E. S. Haynes, do hereby remise, release and forever quitclaim until said Board all my right and title of dower in the above described premises.

"In Witness Whereof we have hereunto set our hands and seals the 26th day of December, Anno Domini One Thousand eight hundred and fifty-six (1856).

"Signed, sealed and delivered in presence of

Jacob Shepard	E. S. Haynes
Henry H. Viets	Martha Haynes
(Seal)	(Seal)"

Your comment relative to the lack of words of succession, following the name of the grantee, such as "successors and assigns", is noted. In answer to the contention that this want of words of succession defeats the conveyance of a fee simple estate, your attention is first directed to the otherwise completeness of the deed. Apt and skillful language is used in every particular. The consideration named ($80.00) was doubtless an adequate sum for the amount of land conveyed (one acre) at that time (1856).

In the habendum clause the grantor covenants for himself, his heirs, executors and administrators, that he is well seized of a fee simple estate, free from all encumbrances and has good right to bargain and sell the same. The wife releases dower. The instrument is duly signed in the presence of two witnesses and properly acknowledged by the grantor and his wife. Absolutely no language in any wise limiting a fee simple estate is used other than the words "so long as they want the same for a school house site", used in the habendum clause, which language is discussed later in this opinion.

In further answer to the contention that the lack of words of succession defeats the conveyance of a fee simple estate, the following authorities are cited:

Thompson on Corporations, Vol. 3, p. 2373:

"In grants to corporations aggregate the word 'successors' though usually inserted, is not necessary to convey a fee-simple title. While under former rules it might be admitted that such a grant was only an estate for life, yet as the corporation is perpetual, so the estate for life would likewise be perpetual. Thus, in an early Pennsylvania case it was said that if a freehold passed to an aggregate corporation, it must be a fee or its equivalent, for, as such a corporation never died, a grant which would convey a life estate to an individual passed to such a corporation an estate which was perpetual, or equivalent to a fee simple."

Corpus Juris, 14a, Section 2412, p. 519:

"Words of succession are unnecessary to convey to a corporation an estate of inheritance, if the grantor has such an estate to convey. And under statutes providing that all of the estate or interest of the grantor shall pass unless the intent to pass a lesser estate or interest shall appear by express terms, it is not necessary that the deed contain words of succession in order to convey an estate of greater duration than that of the term of legal existence of the corporation where it is of limited duration."

Trustees of Caledonia County Grammar School v. *Burt,* 11 Vermont, 632-640:

"It appears to us that there can be no possible doubt of the intent of the legislature, as expressed in this act. It creates an aggregate corporation. It makes to that corporation a grant which unquestionably was intended to include the land in controversy, and included that or none. This grant being to an aggregate corporation, having perpetual succession, required no words of perpetuity, and was as unconditional and as absolute and of the same effect, as a grant to a man and his heirs and assigns forever. It is obvious that such, at the time, was the understanding of all concerned. The legislature annexed to the grant the express provision that a future legislature might distribute the avails of all such lands among the several counties; thereby clearly showing they understood that, by the grant, they parted with all control of the lands, except what they expressly reserved. The trustees so understood it, for they proceeded to make durable leases of the land. It must be it was so intended to be understood by the memorialists, as the case finds they made the promised endowments or grants, which could not have been expected, if it was understood the grant was subject to being immediately revoked."

Congregational Society of Halifax v. Stark, et al., 34 Vermont, 243:

"A deed to a corporation aggregate will convey a fee though the word 'successors' is not used."

Wilkesbarre v. *Wyoming Historical Society,* 134 Pennsylvania St. Rep., p. 616, 4th para. syllabus:

"Said society being a corporate body, the omission from the conveyance to it of the words 'successors and assigns', did not prevent the passage of a title in fee-simple; nor did it imply any condition that the land granted should be held and used for the purpose named in the statute and resolution under which the deed was made."

See also section 4749, General Code of Ohio, which reads as follows:

"The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

This section makes a board of education a body politic and corporate and said section has been in effect in Ohio in similar form since March 14, 1853 (See S. & C. Statutes of Ohio, pages 1346 and 1350), and thereby brings the board of education in question within the rule that lack of words of succession in a deed to a corporation are unnecessary to convey a fee simple estate.

The second question in your inquiry involves the meaning and effect of the following words found in the habendum clause of the deed, to-wit:

> "unto said Board of Education so long as they want the same for a school house site to them and their own proper use and behoof."

These words are found only in the habendum clause of the deed and, standing along as in the deed in question, do not create a condition.

> "A condition is not created by a restriction of the use of property without a clause of re-entry or of forfeiture." (Ashland v. Greiner, et al., 58 O. S., 67.)

There is no such clause of re-entry or of forfeiture in the deed in question. In fact the deed here under consideration is clearly a full and complete general warranty deed. In the granting clause the grantor recites a consideration of "Eighty Dollars" received to his *full satisfaction,* for which he proceeds in the same clause to "give, grant, bargain, sell and confirm" unto said board one acre of ground. This language clearly conveys all of the interest of the grantor, and further indicates by the words "full satisfaction" that he intends to and does part with his entire estate in said premises without reservation or condition. And again, in the habendum clause the grantor covenants that he is well seized of an estate in fee simple with good right to bargain and sell the same, and further covenants to warrant and defend the same unto said board.

In the case of *Larzcill* et al. v. *Farrelly*, 8 Ohio App. Rep., 356, the syllabus reads:

> "The use in a deed of general warranty of the words, 'for the use and sole purpose of the Catholic church and such other erections as may be needed for the use of said Catholic church,' does not constitute a condition subsequent or engraft a limitation upon the title, but at most is a mere suggestion or unenforceable request or desire."

From the opinion in this case the following discussion is quoted:

> "A condition will not be raised by implication from a mere declaration contained in an instrument that the grant is made for a particular or certain purpose, unless it is coupled with words clearly showing upon their face such a condition.
>
> "In a warranty deed, such as the one now before us for construction, which contains the usual words of warranty and alienation of title of grantors, the law presumes that all of the grantor's title and interest in the real estate described in said instrument passes to the grantee, unless by some plain language used therein the contrary is shown.
>
> "Conditions which in any way have a tendency to destroy or lessen estates are not favored by the law, and thus are strictly construed, and all doubts are resolved against restrictions.

"While it is true that no precise form of words is necessary or essential to create a condition subsequent, nevertheless, if in a deed, it must be created by such terms as to leave no doubt of the intentions of the grantor so to do.

"The language used by the grantors in the deed in the case at bar is clear, plain and unambiguous, and there is no doubt about its meaning, but, as we interpret and construe it, falls far short of being sufficient to create a condition subsequent.

"So far as creating limitations upon the title conveyed, it certainly does not do so. In legal effect it has no force, and the most that can be claimed for it is that it might be construed as a mere wish or desire on the part of the grantors to have the property used for the purposes indicated by the language; but in effect it is a mere suggestion, an unenforceable request or desire.

"An examination of the deed nowhere discloses any language that could be construed as intended to create any limitation upon the fee simple title in the grantees, their heirs and assigns, and we find no reservations or limitations contained in said deed.

"It is generally known that, when an estate granted is intended to be terminated or forfeited, certain terms are used in the granting clause, or somewhere in the deed, declaring that the estate conveyed is to be forfeited 'in the event that' certain conditions are not complied with. But in the deed now before us there is an utter absence of any such provisions."

In further consideration of the second question involved in your inquiry, I note you have already made reference to an opinion of this office found in Opinions of the Attorney General for 1920, Vol 2, p. 1206, and in view of the discussion in that opinion of a somewhat similar question, and the authorities cited above, I am of the opinion that the deed you submit conveys a fee simple estate and that the words in the habendum clause of the deed, to-wit, "unto said board of education so long as they want the same for a school house site to them and their own proper use and behoof", do not create a condition subsequent, but are at most descriptive of a suggestive use for which the land was granted; and that the board of education can sell the buildings and grounds, and convey a good and sufficient fee simple title and use the proceeds received from said sale for school purposes.

Respectfully,
C. C. CRABBE,
Attorney General.

167.

APPROVAL, BONDS OF VILLAGE OF EUCLID, CUYAHOGA COUNTY $5,200, FOR CONSTRUCTION OF SEWER AND WATER CURB CONNECTIONS IN MONTEREY ROAD.

COLUMBUS, OHIO, March 21, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.