

2168.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, May 28, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

2169.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF W. H. HARKNESS AND
WIFE, IN CLAY TOWNSHIP, MUSKINGUM COUNTY, OHIO.

COLUMBUS, OHIO, May 28, 1928.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication enclosing an abstract of title and a warranty deed executed by W. H. Harkness and wife, covering a certain tract of land situated in Clay Township, Muskingum County, Ohio, and which is more particularly described in said deed as follows:

“Situated in the northwest quarter of Section No. 3, Range 14, and Township 14, beginning at an iron pin in the south line of the tract of land purchased by the State of Ohio from the Tri-County Brick Co.; thence South 57 degrees 45 minutes East 6.34 chains to an iron pin in the said South line; thence South 1 degree 17 minutes East 4.00 chains to an iron pin; thence South 52 degrees 13 minutes East 8.23 chains to a stone in the South line of the William H. Harkness tract. Thence North 71 degrees 00 minutes West 15.60 chains to an iron pin in the East line of the Zanesville, Marietta & Parkersburg Ry. right of way, thence along the said East line of the Zanesville, Marietta & Parkersburg right of way North 21 degrees 43 minutes East 7.56 chains to the place of beginning, containing 5.84 acres more or less. It is the intention of this deed to describe all the lands now held by the said William H. Harkness in Section No. 3 Clay Township, Muskingum County, Ohio.”

An examination of the abstract of title submitted shows that there are some defects in the very early history of the title of land, including that here under investigation, which defects can be safely waived on account of the lapse of time. However, there is one objection noted in my examination of this abstract which makes it impossible for me to approve the title of said W. H. Harkness to the tract of land here under investigation.

It appears from the abstract that on April 22, 1911, one Alice Bell Harkness died intestate seized in fee simple title of a tract of 62 acres of land, including the above described tract of land here under investigation. On her death Alice Bell Harkness left surviving her W. H. Harkness her husband and the following named children: Delmar W. Harkness, Bertie M. Harkness, Daisy L. Rider and Earl Dale Harkness.

All of these children were of age except said Earl Dale Harkness, who at the time was ten years old. On May 8, 1912, said W. H. Harkness, together with the above named surviving children and heirs of Alice Bell Harkness, other than said Earl Dale Harkness, joined in a quit-claim deed and thereby conveyed to one Elizabeth O. Beem all their right, title and interest in and to said 62 acre tract, except 9.03 acres thereof which appears to have previously been sold to said Elizabeth O. Beem, and excepting a right of way through said 62 acre tract of land sold to the Zanesville, Marietta & Parkersburg Railway Company. On June 8, 1912, W. H. Harkness as guardian of Earl Dale Harkness, executed a deed and thereby conveyed, or attempted to convey to said Elizabeth O. Beem the undivided one-fourth interest of said Earl Dale Harkness in and to said lands. On the same day said Elizabeth O. Beem, together with her husband, John H. Beem, conveyed said lands by warranty deed to W. H. Harkness.

The objection here noted arises out of the fact that there is nothing in the abstract to show that said W. H. Harkness was the legally appointed and qualified guardian of Earl Dale Harkness; or if he were such guardian, to show his authority to execute said deed as guardian and thereby convey to Elizabeth O. Beem the undivided one-fourth interest of Earl Dale Harkness in and to said land. The court proceedings relating to said guardianship should be abstracted so as clearly to show the jurisdiction of the court over the estate of said Earl Dale Harkness; and there should likewise be abstracted all the proceedings touching the authority of W. H. Harkness, Guardian, to execute said deed.

In addition to the objection above noted, I may add that it is impossible from the abstract to know whether the above stated description of the tract of land which the State proposes to purchase is the correct description of said tract or not. It appears from the abstract that the particular tract of land which the State desires to purchase is all that is left of said original tract of 62 acres of land above referred to after six other tracts of land have been sold to other parties out of the same. Inasmuch as the abstract does not contain any description of said tracts of land previously sold out of said 62 acre tract, the abstract does not show the correct description of the remaining tract which the State proposes to purchase. Inasmuch, however, as the deed tendered to the State recites that it is the intention of said deed to convey all the land held by said William H. Harkness in Section 3, Clay Township, Muskingum County, Ohio, in which Section said 62 acre tract of land is located, I am of the opinion that the description given in said deed with reference to the tract of land here under investigation, may safely be accepted.

The abstract shows that the only lien on said premises is that for taxes for the year 1928, the amount of which is as yet undetermined.

An examination of the deed submitted shows that the same has been properly executed and that the same is in proper form with the following exception:

The name of the grantee in said deed is "The State of Ohio, Department of Welfare, its successors and assigns." The deed should run to the State of Ohio, its successors and assigns, without any qualification whatever. A new deed should, therefore, be executed from which the words "Department of Welfare" should be eliminated.

With said abstract and deed you submit encumbrance estimate No. 1500. This encumbrance estimate has been properly executed and shows that there are balances in the appropriation account sufficient to pay the purchase price of the above described tract of land.

The certificate of the Controlling Board shows that the purchase of this tract of land has been approved by said board.

I am herewith returning to you said abstract of title, deed, encumbrance estimate and controlling board certificate.

Respectfully,
EDWARD C. TURNER,
Attorney General.