

2138.

APPROVAL—BONDS CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$7,000.00, PART OF ISSUE DATED FEBRUARY 1, 1921.

COLUMBUS, OHIO, March 21, 1938.

Retirement Board. State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of City of Cleveland, Cuyahoga County, Ohio, \$7,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated February 1, 1921. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of August 1, 1935, being Opinion No. 4486.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2139.

STATUS—ABSTRACT OF TITLE AND OTHER INSTRUMENTS, PROPOSED PURCHASE STATE OF OHIO, THROUGH OHIO AGRICULTURAL EXPERIMENT STATION, THREE DESCRIBED TRACTS OF LAND, USE, DIVISION OF FORESTRY, GRANTOR, J. D. FOLEY, NILE TOWNSHIP, SCIOTO COUNTY, OHIO, PURCHASE PRICE \$4,075.00.

COLUMBUS, OHIO, March 23, 1938.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication with which you submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 64

and other files relating to the proposed purchase by the Board of Control of the Ohio Agricultural Experiment Station for and in the name of the state of Ohio of three tracts of land now owned of record by one J. D. Foley in Nile Township, Scioto County, Ohio. One of these tracts of land comprises 375 acres in O. S. U. Lot No. 5; another of these tracts comprises 300.5 acres as a part of O. S. U. Lot No. 20; and the third tract above referred to consists of 266 acres of land in original Virginia Military District Survey 15834-15878.

Upon examination of the abstract of title submitted to me, which was certified by the abstracter under date of January 6, 1938, and which includes a separate abstract of title with respect to each of the tracts of land above referred to, I find that said J. D. Foley has a good and indefeasible fee simple title to each and all of these tracts of land subject only to the exceptions here noted:

1. On July 21, 1892, one S. B. McKerrihan, who was then the owner in fee simple of the second tract of land above mentioned consisting of 300.5 acres, executed a deed to one Joseph Horning in and by which he conveyed to Mr. Horning all of the growing timber on this tract of land. The abstract does not show what, if anything, has been done by Mr. Horning in the way of cutting and removing timber from this tract of land pursuant to the title in such timber which he obtained by this deed. Whatever the facts may be as to this matter, the fact is that this deed was effective to convey to Mr. Horning all of the growing timber on this land and the State of Ohio in and by its proposed purchase of this property will take title to the land subject to such rights as Mr. Horning may have in the timber which was growing on the land at the time of the conveyance to him above referred to.

2. On March 3, 1910, one Benjamin F. Baglin, who was then the owner in fee simple of the third tract of land above mentioned, consisting of 266 acres in original Virginia Military District Survey 15834-15878, executed a deed to D. N. Hopkins and John W. Snyder in and by which he conveyed this tract of land to said grantees as tenants in common. On January 11, 1917, said D. N. Hopkins, his wife Verna Hopkins joining with him in the conveyance, apparently assumed to convey the whole of the title in this tract of land to C. T. Welch and L. B. Welch. Although more than twenty-one years have passed since the date of this conveyance and although, apparently, said C. T. Smith and L. B. Welch and their successors in title have assumed to own and hold a complete and undivided title in and to this tract of land under the above mentioned conveyance and later conveyances in the chain of title, it may well be doubted whether any

rights by way of adverse possession accrued to Mr. J. D. Foley, the present owner of record of this property, as against the undivided interest of said John W. Snyder. However, this defect in the title of J. D. Foley in and to this tract of land has been effectually cured by the execution by said John W. Snyder, a widower, of a quit claim deed to J. D. Foley in and by which said grantor remises, releases and forever quit claims to J. D. Foley, his heirs and assigns all of the grantor's right, title and interest in and to this tract of land. In this quit claim deed, it is stated that said conveyance is executed to vest in J. D. Foley, the grantee, all of the title which said grantor, John W. Snyder, acquired in said real estate by the deed executed by Benjamin F. Baglin and wife to D. N. Hopkins and John W. Snyder by deed under date of March 3, 1910. This quit claim deed lately executed by John W. Snyder to J. D. Foley, here referred to, has not been filed for record. This should, of course, be done as soon as the transaction for the purchase of this property is closed by your department.

From my examination of the abstracts of title relating to these several tracts of land, I find that said J. D. Foley owns and holds each and all of these tracts, free and clear of all encumbrances except as to the taxes on these several tracts for the year 1937, which taxes are, of course, a lien upon said respective tracts of land. As a further exception it is noted that J. D. Foley, the present owner and holder of the tracts of land here under investigation, obtained title to the same by descent from his father, B. W. Foley, who died intestate November 15, 1935. It appears that B. W. Foley was a resident of West Union in the state of West Virginia at the time of his death. However, the property here in question is located in the State of Ohio; and any inheritance taxes which accrued on the succession of J. D. Foley to the title to this property under the laws of this State became a lien upon the property until such inheritance taxes are paid. Nothing is stated in the abstract of title with respect to the determination by the Probate Court of Scioto County with respect to the matter of inheritance taxes, if any, payable by Mr. J. D. Foley on his succession to the title to this property; although, as to this, it does appear that said J. D. Foley, as administrator of the estate of B. W. Foley, has filed his final account in execution of his trust as such administrator. It is suggested that before the transaction for the purchase of this property is closed, information be required as to whether or not any determination of inheritance taxes on J. D. Foley's succession to this property has been made by the Probate Court of Scioto County; and if any determination so made shows that any such inheritance taxes accrued on this succession, that such taxes have been

paid. Subject only to the exceptions above noted, the title of J. D. Foley in and to the three several tracts of land above referred to is hereby approved.

Upon examination of the warranty deed tendered to the state of Ohio by said J. D. Foley, I find that the same has been properly executed and acknowledged by said grantor and by his wife Ruth Foley, who by this instrument releases all of her right and expectancy of dower in this property. In this connection, it is noted that although the granting clause in this deed and a part of the description of the property thereby conveyed are on the printed deed form which was executed and acknowledged by said grantor and his wife, a part of the description of this property is on a separate sheet of paper which is permanently attached to the deed form which was executed as the deed of said grantor and his wife. This deed, so executed, does not, I believe, in any way offend the statutory provision originally enacted as Section 1 of the Act of February 22, 1931, and which is now found in Section 8510, General Code, which requires the acknowledgment by the grantors of a deed to be on the same sheet on which the instrument is written or printed. As to this, it is noted that in the case of *Norman vs. Shepherd*, 38 O. S., 320, it was held that a deed, in other respects valid, written upon two sheets of paper attached one to the other, the latter of which contains the testatum clause, the signatures of the grantors and witnesses, and the certificate of the officer taking the acknowledgment, is not invalid under the statutory provision above referred to. This deed is, therefore, approved as to the execution thereof; and inasmuch as the form of this deed is such that the same is legally sufficient to convey this property to the state of Ohio by fee simple title with a covenant of warranty therein contained that the property is conveyed to the State, free and clear of all encumbrances whatsoever, this deed as a whole is likewise hereby approved.

Upon examination of contract encumbrance record No. 64, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the rotary fund to the credit of the Division of Forestry of the Ohio Agricultural Experiment Station to pay the purchase price of the above described property, which purchase price is the sum of \$4075.00.

Inasmuch as the purchase price of this property is to be paid out of the rotary fund established for the use of the Division of Forestry in said department under the provisions of House Bill No. 571, no approval of the purchase of this property by the Controlling Board was or is necessary.

Subject only to the exceptions above noted with respect to the title of J. D. Foley in and to the property here under investigation,

the files submitted to me are hereby approved and the same are herewith returned to you as is, likewise, the quit claim deed executed by John W. Snyder to J. D. Foley, above referred to.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2140.

APPROVAL—THREE LEASES, RESERVOIR LANDS, STATE OF OHIO, THROUGH CONSERVATION COMMISSIONER, LAKE LORAMIE, SHELBY COUNTY, OHIO, LESSEES, BERT VONDERHYDE, FRED DICKMEIER, TERM FIFTEEN YEARS, ANNUAL RENTALS, \$30.00, \$15.00 AND \$30.00, RESPECTIVELY.

COLUMBUS, OHIO, March 24, 1938.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You recently submitted for my examination and approval a number of reservoir land leases executed by you as Conservation Commissioner to the several lessees therein named, by which there were leased and demised to the respective lessees therein named a number of parcels of reservoir lands owned by the state at Lake Loramie, Shelby County, Ohio.

These leases, designated as to the names of the several lessees, the locations of the parcels of land leased, and the annual rental provided for therein, are as follows:

<i>Name</i>	<i>Location</i>	<i>Rental</i>
Bert Vonderhyde	Pt of NE $\frac{1}{4}$ of S 11, T 8 S, R 4 E, Shelby County, Ohio.	\$30.00
Fred Dickmeier	NW $\frac{1}{4}$ of S 6, T 8 S, R 5 E, Shelby County, Ohio.	15.00
Fred Dickmeier	Pt of NW $\frac{1}{4}$ of S 6, T 8 S, R 5 E, Shelby County, Ohio.	30.00

Upon examination of the leases hereinabove referred to, all of which are for a stated term of fifteen years, I find that each and all