

5674.

APPROVAL—DOCUMENT CALLED “WATER LEASE PIPE”—
WILLIAM J. TAYLOR, SPENCERVILLE, OHIO.

COLUMBUS, OHIO, June 2, 1936.

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

DEAR SIR: You have submitted for my examination and approval a document in triplicate called a “water lease pipe,” executed by you as Superintendent of Public Works and as Director of this Department, acting on behalf of the state of Ohio, to one William J. Taylor, Spencerville, Ohio. This lease is one for a stated period of five years from May 1, 1935, and is for the purpose of sprinkling a truck garden. There are leased, for the purpose of inserting a one and one-half inch water pipe, water rights—evidently valued at \$900.00, upon which six percent would be \$54.00, which is the stipulated rental.

As this appears to comply with the statutes made and provided, such as G. C. 431—154—3 and 154-40; and has been properly executed by you as Superintendent of Public Works and as Director of this Department, acting for and on behalf of the state of Ohio, and by William J. Taylor, the lessee therein named, I am accordingly approving the lease, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5675.

DISAPPROVAL—LEASE TO M & E CANAL LANDS—THE
HARDING-JONES PAPER COMPANY OF EXCELLO, OHIO.

COLUMBUS, OHIO, June 2, 1936.

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

DEAR SIR: You recently submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said Department to The Harding-Jones Paper Company of Excello, Ohio. By this lease, which is one for a stated term

of ninety-nine years, renewable forever, and which provides for an annual rental of \$24.00, subject to reappraisal of the leased premises for rental purposes at the end of each fifteen-year period of the term of the lease, there is leased and demised to the lessee above named for manufacturing and general business purposes a parcel of Miami and Erie Canal land and/or adjacent land which is more particularly described by metes and bounds in the lease.

Under the present state of the law relating to the control and custody of the parcel of land here in question and under the facts as they now appear, I am unable to find that you have any present authority to execute this lease in your capacity as Superintendent of Public Works or otherwise. Whether the parcel of land here in question be considered as Miami and Erie Canal lands proper or as lands adjacent thereto, it is quite obvious that the control and custody for purposes of lease or otherwise passed to the Director of Highways as such under Amended Senate Bill No. 39, enacted by the 87th General Assembly under date of April 21, 1927, 112 O. L., 388. This was an act providing for the abandonment for canal and hydraulic purposes of that portion of the Miami and Erie Canal from a point five hundred feet north of the state dam near the corporation line of the city of Middletown, Butler County, Ohio, to the present terminus of the canal at St. Bernard, Hamilton County, Ohio, which section of the Miami and Erie Canal so abandoned included the parcel of land covered by this lease.

Without at this time analyzing the provisions of the act of the 87th General Assembly above referred to, it is sufficient to note that this office in an opinion directed to the then Superintendent of Public Works under date of May 18, 1928, Opinions of the Attorney General, 1928, Vol. II, page 1206, held:

“Under the provisions of the act of April 21, 1927, 112 O. L., 388, providing for the abandonment of that portion of the Miami and Erie Canal from a point 500 feet north of the state dam near the corporation line of the city of Middletown, Butler County, Ohio, to the terminus of said canal at St. Bernard in the city of Cincinnati, Hamilton County, Ohio, for highway purposes, the Director of Highways is invested with the custody and control, for the purposes of said act, of not only the canal property abandoned by said act, but also all lands of the State of Ohio adjacent thereto, and used in connection with said portion of the Miami and Erie canal abandoned by said act.”

It is pertinent to note in this connection that by Section 8 of said act, which was carried into the General Code as Section 14153-8, provision was made for the lease under the direction of the Director of Highways

of all of such canal lands as were not designated as lands needed for highway purposes and of other lands adjacent thereto which had theretofore been used in connection with the canal.

The lands here in question and other parcels of land in like situation in this section of the canal abandoned by this act remained in this situation without other legislation affecting the same until the enactment of Amended Senate Bill No. 127 by the 91st General Assembly under date of May 6, 1935, 116 O. L., 155. This act effected an amendment of the former act by amending certain sections of the General Code into which sections of the former act had been carried by designation of the Attorney General in the manner provided by law. In and by this later act, it was assumed that the Director of Highways had not completed the maps and plats of this section of the Miami and Erie Canal which the former act required him to make. This is evident from the provisions of Section 14153-5, General Code, as the same is amended in the later act of the 91st General Assembly above noted. This section now provides:

“That as soon as practicable, after this act goes into effect, the director of highways of the state of Ohio shall complete maps of the surveys already made or to be made under his direction of the canal property herein described, together with maps and plats of all lands used in connection with that portion of the Miami and Erie canal, heretofore abandoned, belonging to the state of Ohio adjacent thereto, and file copies thereof with the governor, and likewise with the superintendent of public works, and when so filed they shall become official plats in each of such state departments.”

Section 14153-6, General Code, as amended in the same act, provides:

“That the director of highways is hereby directed to make a plat or plan, showing the highway, its length, grades and width of so much of the canal property as is to be used for such highway purposes, and all other lands adjacent thereto which may be leased for other purposes, and shall file copies thereof with the governor, and the superintendent of public works, respectively, and from and after the date of such filing all such canal lands not included within the limits of such highway, shall pass under the control of the superintendent of public works.”

It will be noted from the provisions of the section just quoted that canal lands in this section which are not included within the limits of the projected highway indicated by the plat or plan of such highway, do not

pass under the control of the Superintendent of Public Works until such plat or plan is made and copies thereof are filed with the Governor and the Superintendent of Public Works. And in this connection, Section 14153-7, General Code, as amended in this act, provides that lands not reserved for highway purposes as shown on said plat may be leased to municipalities, individuals, firms or corporations under the direction of the Superintendent of Public Works in the same manner as is provided in section 13964 (13965) of the General Code, except that the term of such leases shall be fifteen years and multiples thereof up to ninety years, or for the term of ninety-nine years renewable forever; subject, however, to a reappraisal by proper state authority at the end of each fifteen year period, and at the end of the ninety-ninth year. Further, as to this, Section 14153-8, General Code, as amended in the later act, provides that all other lands which may be shown on the plat adjacent to said highway and which will not be used for highway purposes may be leased under the direction of the Superintendent of Public Works in the manner and subject to the terms and conditions therein provided for.

However, as above noted, the Superintendent of Public Works does not obtain control and custody of the canal lands in this section or lands of the state adjacent thereto until the Director of Highways makes a plat or plan showing the projected highway and the canal lands to be taken for this purpose, and until copies of this plat or plan are filed with the Governor and the Superintendent of Public Works.

Thinking that the Director of Highways might, perhaps, effect a substantial compliance of the provisions of this act by making a partial survey of the lands covered by this lease and of other canal lands and lands adjacent thereto which would be sufficient in its purpose and scope to show affirmatively that the parcel of land here in question would not and could not be used for highway purposes in connection with any contemplated highway improvement on any part of the canal lands in this section, contact was made with an authorized representative of the Highway Department to this end. The information which was received by this office in this connection indicated that even such partial survey would entail an expense far in excess of that which would be justified by the small rental that the state is to get for this property under the terms of the proposed lease, and that, moreover, owing to the present activity of the field force of the Highway Department in construction work, it will not be possible for that Department to make this partial survey for some time to come.

However, after contact was made with the Highway Department for the purpose above indicated, information was received from your office to the effect that the Director of Highways had made a survey and plat of that part of the Miami and Erie Canal lands and of lands adjacent

thereto at and near Excello. If this information is correct, as I believe the same to be, and if this survey and plat shows that the parcel of land covered by the proposed lease here in question will not be needed for the purpose of any contemplated highway improvement at this point, it is suggested that you have the Director of Highways make an entry on his office journal affirmatively finding that this parcel of land will not be needed for highway purposes and releasing the same to the custody and control of the Superintendent of Public Works. When this is done and a copy of the finding made by the Director of Highways as evidenced by his journal is attached to this lease and to the duplicate and triplicate copies thereof, the lease on presentation to this office will be approved by me.

For the reasons above stated, I am herewith returning this lease and the duplicate and triplicate copies thereof without my approval at this time, to the end that an addendum may be made thereto evidencing the above suggested finding to be made by the Director of Highways.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5676.

APPROVAL—BONDS OF IRONTON CITY SCHOOL DISTRICT,
LAWRENCE COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, June 3, 1936.

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

5677.

APPROVAL—BONDS OF CITY OF TOLEDO, LUCAS COUNTY,
OHIO, \$4,000.00.

COLUMBUS, OHIO, June 3, 1936.

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