

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

Respectfully,

THOMAS J. HERBERT,
Attorney General.

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STATUS—CANAL LAND LEASE, MIAMI AND ERIE CANAL LANDS, EXECUTED BY STATE TO VILLAGE OF FRANKLIN, WARREN COUNTY, JANUARY 11, 1929—DEFAULT, DELINQUENCY IN PAYMENT OF RENTALS.

COLUMBUS, OHIO, May 25, 1939.

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

DEAR SIR: This is to acknowledge the receipt of your recent communication in which, referring to a certain lease of Miami and Erie Canal lands executed to the Village of Franklin, Ohio, under date of January 11, 1929, and to the fact that the Council of said village had adopted a resolution authorizing and directing the Mayor and Clerk of said village to surrender this lease, you request my opinion on the question whether or not there is any legal way in which your department can cancel said lease.

The lease here in question is one executed on the date above mentioned by the then Superintendent of Public Works of the State of Ohio with the approval of the Governor and the Attorney General, by which, in consideration of the provision therein for the payment by the Village of Franklin of an annual rental therefor, which annual rental during the first fifteen-year period of the term of the lease is the sum of \$876.00, payable in semiannual installments of \$438.00 each, there is leased and demised to said village for a term of ninety-nine years, renewable forever, all of that part of the abandoned Miami and Erie Canal from the north corporation line of said village to a point six hundred feet south of the south line of Sixth Street in the village. This lease is one executed under the authority of House Bill No. 162 enacted by the Eighty-sixth General Assembly under date of April 11, 1925, 111 O. L., 208, which authorized the lease of those portions of the Miami and Erie Canal abandoned for canal purposes by said Act, for terms of fifteen years or any multiple thereof up to and including ninety years or for a term of ninety-nine years, renewable forever, subject to a reappraisal of the land covered by the lease at the end of each fifteen-year period of the lease for the purpose of determining the annual rental to be paid therefor.

And in this connection it is pertinent to note that by the terms and provisions of this lease certain leases theretofore executed by the Department of Public Works to individuals and corporations of portions of this section of the Miami and Erie Canal land covered by the lease to the Village of Franklin were assigned to said village which by the terms of this lease was likewise given the right to execute subleases of lands covered by its lease subject to the approval of the Superintendent of Public Works.

With respect to the question presented in your communication as to your authority as Superintendent of Public Works to cancel this lease as requested by the Village of Franklin, it may be said that aside from any delinquency on the part of the lessee which in itself by the provisions of the lease gives you a right to cancel this lease as against said lessee, the question whether you as such officer aforesaid by mutual agreement with the lessee may cancel this lease simply for the purpose of effecting the desires of the constituted officers of the village in the premises and for the purpose of relieving said village of the financial burdens of the lease, is a question of considerable difficulty which I do not find it necessary to determine at this time.

As to this, the records of this office show that the Village of Franklin is in default under the terms of this lease for three semiannual installments of rent in the sum of \$438.00 each, payable by said lessee under the terms of this lease, to wit, the semiannual installment from November 1, 1937, to and including April 30, 1938, inclusive, the installment covering the period from May 1, 1938, to October 31, 1938, inclusive, and the installment from November 1, 1938, to April 30, 1939, inclusive. In addition to these delinquencies in rental payments under the terms of the lease, it is probable that said lessee is likewise delinquent with respect to the payment of the semiannual installment of rent covering the period from May 1, 1939, to and including October 31, 1939.

In this situation, with respect to the delinquencies of the Village of Franklin as the lessee named in this lease instrument with respect to the payment of the semiannual installments of rent therein provided for, it is noted that the lease instrument in and by the thirteenth paragraph thereof provides as follows:

"It is further understood and agreed that if any installment of rent agreed to be paid under this lease shall not be paid at the time the same shall fall due, or within thirty (30) days thereafter, whether a demand therefor shall, or shall not be made, then this lease, at the option of the party of the first part hereto, provided such option is exercised within one year after such default by party of the second part, shall become and be null and void as against the State of Ohio, and the lessee so in default, its successors or assigns, or any party in possession of the premises leased, shall yield possession of the same to the said party of the

first part or its authorized agent, subject to the vested rights of sub-lessees; and the said party of the first part or its authorized agent, in case of default of the payment of rents as aforesaid, may, at any time, subject to the vested rights of sub-lessees, without demand or notice whatever given the lessee, its successors or assigns, or the party in possession of the premises, enter upon and take possession of the premises herein leased by behalf of the State, provided such affirmative action is taken by party of the first part within one year, as aforesaid."

It would seem, therefore, that the question whether this lease is to be canceled is one for your determination in your official capacity as Superintendent of Public Works. If you desire the cancellation of such lease, such cancellation can be effected by you in the manner therein provided for the non-payment of the rentals therein provided for; and in such case the rentals under the prior existing leases which were assigned to the Village of Franklin by the terms of this lease, as well as the rentals provided for in any subleases executed by the Village of Franklin, would become payable directly to the State of Ohio. On the other hand, if you do not desire to effect a cancellation of this lease by reason of the delinquency of the Village of Franklin in failing to pay the rentals provided for in the lease, and you desire to enforce the terms of the lease as against said lessee with respect to the rentals therein provided for, it is quite certain that the action of said village through its Council in directing its Mayor and Clerk to surrender this lease is not in itself effective as a cancellation of the lease. In this situation, the liability of the Village of Franklin for the payment of the delinquent rental installments, as well as its liability for future rental installments as they become due and payable, may be enforced by action at law for the full amount of such rentals unless such claims of the State against said village as the lessee under this lease instrument are adjusted by the Attorney General and Auditor of State and are thereby compromised by the payment by said village of a sum of money less than the full aggregate amount of the rentals due and payable, as is provided for by Section 268, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.