

cemetery your attention is called to Sections 3441, 3442, and 3455, General Code. Doubtless proper proceedings instituted under these sections will effectuate your purpose.

In view of the express prohibition contained in Section 12910, *supra*, it is my opinion that a board of township trustees may not purchase land for a township cemetery from a member of such board.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3035.

APPROVAL, LEASE TO MIAMI AND ERIE CANAL LAND IN VILLAGE
OF MIAMISBURG, MONTGOMERY COUNTY, OHIO.

COLUMBUS, OHIO. March 10, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain canal land lease in triplicate, by which the state of Ohio, acting through you as superintendent of public works and as director of said department, has leased and demised to the village of Miamisburg, Ohio, subject to certain conditions and restrictions provided for in said lease and subject to certain prior leases, certain Miami and Erie Canal lands which were abandoned for canal purposes by the act of the 86th General Assembly, passed March 25, 1925, and which went into effect on the 14th day of July, 1925. 111 O. L. 208. The particular portion of abandoned Miami and Erie Canal lands covered by said lease is all that part of said canal lands lying within the limits of the village of Miamisburg and is more particularly described as follows:

“Being all that portion of the abandoned Miami and Erie Canal within the corporate limits of the village of Miamisburg, Montgomery County, Ohio, commencing at the north corporation line of said village at or near Station No. 9961+50 of H. C. Baldwin’s survey of the Miami and Erie Canal south of Dayton, Ohio, made under the direction of the State Board of Public Works in 1912, and extending thence southward over and along said Miami and Erie Canal, including the full width of the bed and embankments thereof a distance of seventy-five hundred and forty-two (7542) feet, more or less, to the south corporation line of said village, plats of said survey being on file in the Department of Public Works, at Columbus, Ohio, and to which reference is hereby made for additional information.”

As above indicated, parts of the canal lands covered by the lease here under consideration are covered by prior leases. These prior leases which are listed and referred to in the lease here in question are: two leases executed to the village of Miamisburg under date of May 8, 1923; a lease executed to one R. J. Connelly, May 10, 1926; and a lease executed to the Cincinnati, Hamilton and Dayton Railway Company, January 18, 1927. Said prior leases, to the extent that they cover abandoned Miami and Erie Canal lands in the village of Miamisburg, and included

in the present lease to said village, are to be assigned by the state of Ohio to the village of Miamisburg in the manner provided for by the act of the legislature above noted.

The lease to the village of Miamisburg here under consideration is one executed on an application therefor, made and filed with the superintendent of public works under date of the 31st day of March, 1926, and is executed pursuant to the authority of specific provisions of said act passed March 25, 1925, which, subject to certain limitations therein provided for, give municipal corporations and other political subdivisions of the state a preferred right to take a lease upon such abandoned Miami and Erie Canal lands lying within or adjacent to such municipal corporations or other political subdivisions. In this connection it is noted that Sections 5 and 6 of said act provide as follows:

"Section 5. Any city, village or other political subdivision of the state desiring to lease any portion of said abandoned canal and feeder lands, basins, wide waters and state lots heretofore used in connection with canal property lying within or adjacent to the boundaries of such political subdivision, shall, within one year from the date at which this act becomes effective, file an application for a lease of the same with the superintendent of public works.

Section 6. Said application shall be made in writing upon forms provided for that purpose and shall state the terms of years for which such lease is desired, and shall be signed by a public officer duly authorized by the proper authorities of the city, village or other political subdivision making said application."

Section 7 of said act provides that as soon as convenient after the filing of the application by a municipal corporation or other political subdivision for the lease of the canal lands described in such application, the governor shall appoint a board of appraisers to appraise the portions of such abandoned canal lands applied for by such municipality or other political subdivision. By Section 9 of said act it is provided that as soon as the appraisement of canal lands applied for by municipalities or other legal subdivisions of the state has been completed, the superintendent of public works, subject to the approval of the governor and attorney general, shall proceed to lease such canal lands in conformity with the provisions of said act, subject to all rights under existing leases.

The lease here in question is one for a term of ninety-nine years, renewable forever, and provides for the payment of an annual rental therefor in the sum of one thousand four hundred sixteen dollars and eleven cents during the first fifteen year period of the term of said lease, which annual rental is four per cent upon the sum of thirty-five thousand four hundred two dollars and eighty-seven cents. Said lease further provides that after said first fifteen year period said lessee shall pay to the state of Ohio an annual rental of four per cent of the appraised value of the property leased, as determined by an appraisement to be made at the end of each fifteen year period of time during the term of the lease. The term of said lease, as stated therein, and the rental to be paid by the village of Miamisburg, the named lessee therein, are in accordance with Sections 10 and 11 of said act, the pertinent provisions of which are as follows:

"Section 10. * * * * *

Such leases as may be granted to municipalities or other legal subdivisions of the state by the superintendent of public works pursuant

to the provisions of this act, may run for a period of 99 years, renewable forever, or for a term of not less than 15 years, or for any multiple of 15 years up to and including 90 years.

Section 11. Such leases shall provide for an annual rental at the rate of four per cent *per annum* upon the appraisalment, as fixed by the board of appraisers, as herein provided, payable semi-annually, in advance, on the first day of May and November of each and every year."

Leases of abandoned Miami and Erie Canal lands lying within the limits of a municipal corporation and for which such municipal corporation has made no application within the time prescribed and in the manner provided by Sections 5 and 6 of said act above noted, may be leased by the superintendent of public works to individuals or to corporations other than the municipal corporation within which such abandoned canal lands may be located. This is provided for by Section 18 of said act, which reads as follows:

"Any portion of the abandoned canal lands described in section one of this act within a municipality that is not included in an application by such municipality and for which no lease is granted, may be leased by the superintendent of public works, subject to the approval of the governor and attorney general to individuals and corporations upon the same terms and conditions as are herein provided for leases to municipalities, except that the rate of rental shall be six per cent upon the appraised value thereof as determined by said superintendent at the date of the granting of such leases."

Upon examination of the provisions of this lease of the above described abandoned Miami and Erie Canal lands to the village of Miamisburg, I find the same to be in substantial conformity with the act of the legislature above noted, which provided for the abandonment of said canal lands and for the lease of the same.

The only question presented with respect to the validity of said lease arises out of the fact, not appearing by way of recital or otherwise in the terms of said lease, that on or about August 4, 1930, the superintendent of public works, acting as director of said department, executed to one Martin L. Haller of Dayton, Ohio, a permit, so-called by which, in consideration of the payment of an annual rental of two hundred and forty dollars by said Martin L. Haller, permission was granted to him to use and occupy for general business purposes, and for a term of five years, a certain portion of said Miami and Erie Canal property, including the full width of the bed and banks thereof, located in the city of Miamisburg and described as follows:

"Beginning at the southerly line of Central Avenue in said city, and running thence southerly with the easterly and westerly lines of said canal property one hundred (100) feet to the northerly line of a lease granted the Village of Miamisburg under date of May 8th, 1923, and containing 8,000 square feet, more or less."

The portion of said abandoned Miami and Erie Canal property described in said permit is included in the present lease to the village of Miamisburg here under consideration, and inasmuch as there is no recognition of said permit to Haller in the present proposed lease to the village of Miamisburg and no provision is

made in said lease for an assignment of the rights of the state of Ohio under said permit to the village of Miamisburg, as is required by Section 10 of said act to be done with respect to existing valid leases on any portion of said canal lands included in the lease to the village of Miamisburg, consideration is here required to be given to the question as to the validity of said permit executed by the superintendent of public works and as director of said department to said Martin L. Haller.

Though the instrument here in question is called a permit, it is in substance and effect a lease by which, in consideration of the payment of the annual rental therein provided for, said Martin L. Haller is given the right, for a term of five years, to use and occupy for business purposes the parcel of abandoned Miami and Erie Canal lands therein described. The statutes of this state do not recognize the right of the superintendent of public works, as director of the department of public works or otherwise, to grant to any one the right to occupy and use canal lands whether abandoned for canal purposes or not, otherwise than by a formal written lease, which lease shall be for a term not less than fifteen years. Sections 13965, et seq., provide for the lease of canal lands, the abandonment and lease of which is not provided for by special acts such as the act of March 25, 1925, above referred to and here under consideration. The required term of all leases executed under Sections 13965, et seq., General Code, is fifteen years.

As above noted, the provisions of the act of March 25, 1925, authorizing the lease of abandoned Miami and Erie Canal lands located within a municipal corporation to any individual or corporation other than the municipal corporation, are those contained in Section 18 of said act above quoted. This section provides that except as therein stated, leases executed to individuals and corporations shall be upon the same terms and conditions as are provided in said act for leases to municipalities. Looking to the provisions of Section 10 of said act, it is clear that such lease, whether executed to a municipal corporation or to an individual or private corporation, is required to be for a term of not less than fifteen years.

Moreover, as is above noted, the provisions of the act of March 25, 1925, providing for the abandonment and lease of Miami and Erie Canal lands here in question, requires all leases of such canal lands as a condition of their validity to receive the approval of the governor and the attorney general; and the same is true of canal land leases generally executed under the provisions of Sections 13965, et seq., General Code. The so-called permit executed by the superintendent of public works in his capacity as director of said department to said Martin L. Haller was not approved by either the governor or the attorney general and said instrument is likewise for this reason unauthorized and void.

In addition to the considerations above discussed, pointing to the invalidity of the so-called permit issued to Martin L. Haller under date of August 4, 1930, it appears, as is above noted, that the parcel of abandoned Miami and Erie Canal lands covered by the permit or lease to Martin L. Haller is included within the Miami and Erie Canal lands covered by the lease to the village of Miamisburg here in question, the application for which lease was pending at the time of the execution of said lease or permit to Haller. Under the provisions of Section 18 of said act providing for the abandonment of said Miami and Erie Canal lands and for the lease of the same, it is only such portions of abandoned canal lands within a municipality as have not been included in an application for lease by such municipality, that may be leased by the superintendent of public works to any individual or to any corporation other than such municipality. It is quite clear therefore that for this additional reason the superintendent of public works had no authority to execute and deliver to Martin L. Haller the permit here in question.

In the consideration of the question such as that here presented, it is to be

noted that the superintendent of public works has only such powers and authority with respect to the public works of the state as are expressly conferred upon him by law or such as are necessarily implied for the purpose of carrying out the express powers granted to him as such officer. *The State of Ohio, ex rel., vs. The Cincinnati Central Railway Company*, 37 O. S. 157, 174.

Assuming to pass only upon the legal questions presented in the consideration of the present proposed lease to the village of Miamisburg of abandoned Miami and Erie Canal lands located within its limits, I find said lease to be substantially in accordance with the provisions of the act above referred to, providing for the abandonment and lease of Miami and Erie Canal lands, and with all other statutory provisions relating to the execution of leases of this kind. Said lease is accordingly hereby approved as is evidenced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3036.

JUSTICE OF THE PEACE—OFFICE SPACE—TOWNSHIP TRUSTEES
NOT REQUIRED TO PROVIDE—FACILITIES OF TOWN HALL
SHOULD BE MADE AVAILABLE BY TRUSTEES FOR HOLDING OF
COURT BY THE JUSTICE.

SYLLABUS:

1. *A board of township trustees is not required to provide an office for a justice of the peace of the township.*

2. *Township trustees should make available, at reasonable times, the facilities of a town hall to a justice of the peace of the township for the purpose of holding court.*

COLUMBUS, OHIO, March 10, 1931.

HON. SCOTT GRAVES, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your communication of recent date, in which you make the following inquiry:

“The Village of Oak Harbor and the township of Salem jointly built a town hall. The control of the building is in the hands of the township trustees, except that a mayor’s office and a jail is provided for the use of the village. Must the township trustees provide an office for the justice of the peace of Salem township?”

An examination of the statutes of Ohio fails to disclose any requirements to the exact locality where justices of the peace shall hold court.

It is well settled in this state that in criminal cases such courts may be held outside of the township but within the limits of the county in which the township is situated. *Steele vs. Karb*, 78 O. S., 376; *Stiess vs. State*, 103 O. S., 33.

County commissioners, by the terms of Section 2418, General Code, are expressly authorized to provide suitable places for the holding of county courts,