

provision, of the constitution, prohibiting the incurring of debts or obligations by the state."

Consequently, I am of the opinion that said House Bill No. 227, will not, if it becomes a law, be violative of the Constitution.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4315.

APPROVAL, ADDENDUM TO RESERVOIR LAND LEASE TO LAND AT BUCKEYE LAKE, OWNED BY R. WILKE, COLUMBUS, OHIO.

COLUMBUS, OHIO, June 4, 1935.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication over the signature of the Chief of the Bureau of Inland Lakes and Parks in the Division of Conservation submitting for my examination and approval an addendum to a reservoir land lease which was heretofore on February 10, 1932, executed and delivered to one Eugene Mueller of Columbus, Ohio, and which lease was thereafter on April 8, 1933, transferred and signed by Eugene Mueller to one R. Wilke of Columbus, Ohio, who is now the owner and holder of said lease.

The addendum to said lease which is the subject of the present consideration is in the form of an agreement between the state of Ohio, acting by the Conservation Commissioner, and R. Wilke, the present owner and holder of the lease by which the Department of Liquor Control of the state of Ohio is permitted to install and operate a state liquor store or agency for the sale of spirituous liquor in the storeroom of R. Wilke on the premises described in the lease, which premises are the outer slope and borrow pit in the rear of the West-half of Embankment Lot No. 57 of lots east of Sayre's boathouse at Buckeye Lake as laid out by the Ohio Canal Commission in 1905. By the further provisions of this addendum R. Wilke, as the agent and employe of the Department of Liquor Control in the operation and management of said liquor store or agency and not otherwise, is permitted to sell spirituous liquor in his storeroom on said premises in strict conformity with the provisions of sections 6054-8 and other sections of the General Code relating to the sale of spirituous liquors at state liquor stores. This addendum effects a modification of the original provisions of the lease which in terms prohibited the sale of spirituous and intoxicating liquors on said premises; and by said addendum it is provided that the terms of the lease prohibiting the sale on said premises of spirituous and intoxicating liquors are modified insofar as the same are inconsistent with the provisions of the addendum, but that otherwise the provisions of the original lease are to remain in full force and effect.

The first question suggested by this addendum is that with respect to the authority of the parties to this lease to change or modify the same during its term. As to this it is to be observed that the state owns and holds the reservoir land covered by this lease in a proprietary capacity and that acting pursuant to statutory authority the Conservation Commissioner was authorized to execute this lease to the original lessee

therein named and pursuant to the provisions of said lease he has approved the assignment thereof by the original lessee to R. Wilke, the present owner and holder of the lease. It is a rule of general application that public officers having by law the power to contract have also the power to modify or change contracts the same as natural persons in the absence of express or implied statutory restrictions. In this connection it may be noted that this office has uniformly held that the Conservation Commissioner by agreement with the lessee in a lease of this kind, or otherwise, is not authorized to modify the terms of the lease with respect to the rental to be paid by such lessee without express statutory authority therefor. This conclusion is required by the obvious consideration that in leases of this kind the annual rental therein provided for during the whole of the term of the lease is, under the statute providing for the execution of such leases, determined by an appraisal of the value of the property leased made before such lease is executed.

I find nothing, however, in the statutes relating to leases of this kind which either expressly or impliedly restricts or otherwise limits the authority of the Conservation Commissioner, with the consent of the lessee, to effect a modification of the lease with respect to an incidental matter such as is the subject of the addendum here in question. There is no statute which forbids the sale of spirituous liquors on State Reservoir Lands as such, or which requires any provision prohibiting the sale of spirituous liquors to be inserted in a lease of this kind. Applying in this situation the general rule above noted with respect to the authority of a public officer to modify contracts entered into by him by and with the consent of the other party of the contract, I am inclined to the view that the Conservation Commissioner in the present instance had the authority by and with the consent of the holder of the lease to make the addendum here in question. And finding that said addendum has been executed with all the formalities required with respect to the original lease and that the same has been approved by the Governor, said addendum is hereby approved by me as to legality and form as is evidenced by my approval endorsed upon the addendum to the original lease and to the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4316.

APPROVAL, RESERVOIR LAND LEASE TO LAND AT INDIAN LAKE, LOGAN COUNTY, OHIO—EARL MERRITT.

COLUMBUS, OHIO, June 4, 1935.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a reservoir land lease in triplicate which the Chief of the Bureau of Inland Lakes and Parks in the Division of Conservation has submitted for my approval under the provisions of section 464 of the General Code, requiring leases of this kind to be approved by the Governor and the Attorney General.

The lease here in question, which is one for a stated term of fifteen years and which provides for an annual rental of \$27.00, payable in semi-annual installments in the sum of \$13.50 each, there is leased and demised to one Earl Merritt of Christians-