

collected and paid in the same manner as is provided for the administration, collection and payment of the taxes levied under G. C. Section 5332.

The administration, collection and payment of the said tax levied under G. C. Section 5332 is regulated by the provisions of Section 5338, General Code, which provides the rates of interest that may be imposed and the rate of discount allowed in the payment of said taxes.

It is therefore my opinion that in the assessment of an additional tax under the provisions of Sections 5335-1, et seq., of the General Code, the estate is entitled to a discount under the provisions of Section 5338, General Code, if the said tax is paid before the expiration of one year after the date of the accrual thereof.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1718.

BUCKEYE LAKE—LEASES—NO REDUCTION IN RENTALS.

SYLLABUS:

There being no statutory provision authorizing the Department of Public Works to reduce the annual rentals to be paid by lessees on outstanding leases of state property at Buckeye Lake, no reduction in such rentals can be made.

COLUMBUS, OHIO, February 16, 1928

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication reading as follows:

“We have a number of lessees at Buckeye Lake Park who allege that they are paying an exorbitant rental for State property covered by lease held by them and are therefore requesting a material reduction by reason of their inability to produce sufficient revenue to justify the payment of the rent stipulated.

Will you kindly advise this Department as to whether or not there is a statute enabling this Department to make such reductions, and if so, kindly cite the Sections of the General Code under which we may act.”

Under the provisions of Section 469, General Code, the body of water and adjacent state lands in Licking, Fairfield and Perry counties, known as the Licking reservoir or Buckeye Lake is dedicated and set apart forever for the use of the public as a public park or pleasure resort.

Sections 471, 473, 477 and 478, General Code, provide as follows:

Section 471. “No state lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Mary’s, or Portage Lakes, shall ever be sold, but the superintendent of public works may lease such lands, including marginal strips and marsh lands around said lakes, the outer slopes of artificial embankments, islands, borrow pits and state lands adjacent thereto as he deems proper under the laws governing the leasing of canal lands.”

Section 473. "The superintendent of public works shall keep a separate account of all revenues derived from leases of state lands in and adjacent to such parks or pleasure resorts, likewise of all funds derived from the sale of special privileges in connection therewith, and shall credit, in a separate account, to each park or pleasure resort, all monies derived from the lease of land or sale of special privileges in connection therewith."

Section 477. "All revenues derived from the granting of leases of lands, docks, boat landings and other special privileges connected with the state parks or pleasure resorts shall be covered into the treasury of the state to the credit of the general revenue fund."

Section 478. "The superintendent of public works shall collect or cause to be collected, all rentals for leases of state lands, pipe permits, boat licenses, dock licenses in state parks and monies for special privileges of any nature in or adjacent to such parks and shall keep such accounts in separate books to be provided for that purpose, and in transmitting such funds to the state treasurer he shall accompany them with a separate statement, giving the names of persons from whom and for what purpose such monies were collected, and to what park or pleasure resort such funds are to be credited, and shall furnish a duplicate statement to the auditor of state."

It will be noted that under the provisions of Section 471, General Code, above quoted, the Superintendent of Public Works is authorized to lease state land in or adjacent to Buckeye Lake and the other lakes therein mentioned, including marginal strips and marsh lands around said lakes, the outer slopes of artificial embankments, islands, borrow pits and state land adjacent thereto as he deems proper "under the laws governing the leasing of canal lands."

The laws governing the leasing of canal lands here referred to are Sections 13965 to 13968, inclusive, General Code. These Sections are quite lengthy, and of these Sections I deem it necessary to quote only Section 13966 which reads in part as follows:

"That if such land is not in possession of any person, or persons, or corporation having a building, or buildings, or other valuable structures thereon, it may be immediately leased for fifteen years, at an annual rental of six per cent. per annum of said valuation, to be paid semi-annually, in advance, and at such place as said commission, board of public works and the chief engineer of the public works may fix by the terms of said lease. Any tract of land so to be valued or appraised, if in the actual possession of any person, persons, or corporation who may own a building, or buildings, or other valuable structure thereon, such valuation shall not embrace the value of such building, or buildings, or other valuable structure, and the person, or persons, or corporation owning the same shall be entitled to such lease of said land or lands upon the same terms and conditions as any other person or corporation would or might be entitled to under this act if there were no building or buildings, or other valuable structure upon said land; provided always, however, that each and every building or other valuable structure erected thereon by any person, or persons, or corporation may be taxed as other property of individuals or corporation in the same locality. * * * "

In an opinion of this department under date of May 1, 1915, reported in Opinions, Attorney General, 1915, Vol. 1, page 613, directed to the then Superintendent of Public Works, it was held that lands to be leased under the provisions of this section should first be valued at their true value in money at the time the lease is made and that the annual rental shall be six per cent per annum on such valuation and should be the same throughout the life of the lease. I assume that the rental provided for in the leases referred to in your communication is predicated upon a valuation of the land covered by said respective leases and that in each instance the annual rental provided for in such leases is six per cent of the appraised value of such land. If I am correct in this assumption, I am unable to see how any reduction can be made in the annual rental under the leases without violating the provisions of Section 13966, General Code, which require such annual rental to be six per cent of the appraised value of the land covered by the lease.

This department in an opinion under date of March 1, 1915, reported in Opinions, Attorney General, 1915, Vol. I, page 205, directed to the then Superintendent of Public Works, held that the Superintendent of Public Works had no authority to cancel an existing lease of state lands or accept a surrender of the same for the purpose of entering into a new lease of the same lands with the original lessee. In this opinion it was said:

"I have carefully examined all the statutes relating to the leasing of state lands and find no provision authorizing the superintendent to cancel any lease under the circumstances suggested by you, and indeed the only circumstances under which he is authorized to cancel a lease seems to be in case rent shall not be paid by the lessee at the time specified in the lease, or within ten days thereafter, this provision being contained in Section 13968. The statute expressly requiring that land be not under an existing lease before the superintendent has any authority to lease it, it would seem that the superintendent would be without authority to lease land under an existing lease unless the power to make the original lease conferred by statute, carries with it the implied power to cancel the lease.

As to the powers of public officers, Mechem in his work on public offices and officers, Section 511, makes the following observation:

'Express grants of power to public officers are usually subjected to a strict interpretation, and will be construed as conferring those powers only which are expressly imposed or necessarily implied.

Such an officer, therefore, can create rights against the State or other public authority represented by him, only while he is keeping strictly within the limits of his authority as so construed.'

'A state officer can only deal or contract in relation to the property of the State when he is authorized so to do by the express provisions of law; and any agreement he may make, or attempt to make, in relation to such property, when he is not so authorized, is void as against the State. *McCaslin et al. vs. State ex rel.*, 99 Ind., 428.'

The opinion of this department above referred to is, in my opinion, applicable to the question submitted in your communication, and in the absence of any

statutory authority authorizing your department to make reductions in the annual rental in outstanding leases on state property, I am required to hold by way of specific answer to your question that your department has no authority to make any reduction in the annual rental to be paid under such leases.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1719.

APPROVAL, AS TO FORM—LEASE, PERMIT, APPLICATION AND BOND,
FOR USE OF THE HIGHWAY DEPARTMENT.

COLUMBUS, OHIO, February 16, 1928

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I have your communication of recent date in which you submit for my approval a number of forms for the use of your department, which may be designated as follows:

- (1) Lease for the storage of materials and equipment.
- (2) Permit to lay pipe conduits, drains or other underground structures within public highways.
- (3) Application to open pavement in state highway.
- (4) Application to lay underground structures along or across a state highway without opening pavement.
- (5) Application for permission to erect poles within limits of state highway.
- (6) Bond to secure the performance of the conditions, which are to be attached to each of the permits, referred to in paragraph 2 above.

The first of the forms submitted is prepared to be used when the Director of Highways acts under the provisions of Section 1190-1, General Code.

Each of the forms pertaining to the issuance of permits have been prepared for use in accordance with the provisions of Section 1198, General Code.

Although a bond is not specifically required by the terms of Section 1198, General Code, yet the Director of Highways, acting under the provisions of Section 1198, General Code, may require such a bond. Said section reads, in part, as follows:

“The director may, in his discretion, upon formal application being made therefor to him, grant a permit to any individual, firm or corporation to use or occupy such portion of a road or highway on the state highway system as will not incommode the traveling public. Such permits, when granted, shall be upon the following conditions:

* * *

6. Such other conditions as may seem reasonable to the director; but no condition shall be prescribed which imposes the payment of a money consideration for the privilege granted.

* * * ”

I have carefully examined the forms submitted and finding each and all of them correct in form and legal, I hereby approve the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.