

5664.

DISAPPROVAL—APPLICATION FOR CANCELLATION OF TWO LEASES OF O&E CANAL LANDS AT CANAL FULTON, OHIO—CANAL FULTON LAKE AND IMPROVEMENT COMPANY.

COLUMBUS, OHIO, June 2, 1936.

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

DEAR SIR: I am herewith returning without approval certain findings made by your immediate predecessor in office directing the cancellation of two certain leases of Ohio and Erie Canal lands executed to The Canal Fulton Lake and Improvement Company under dates of April 22, 1925, and October 9, 1925, respectively. By one of these leases, there was leased and demised to the lessee above named a parcel of 1.1 acres of Ohio Canal lands at Canal Fulton, Ohio, for park purposes; and by the other lease above referred to the lessee was given the right to connect the waters of Nimishiling Creek with the canal feeder known as the Fulton Feeder near Station 891 of G. F. Silliman's survey of the Ohio Canal, by the construction of a reinforced concrete bulkhead and by the construction of such other works as were necessary to effect this purpose.

The respective applications for the cancellation of these leases were made under the provisions of House Bill No. 467, 115 O. L., 512, and in each application the reason assigned for the requested cancellation is that there has been no use made of the premises leased for five years. There is nothing in the act above referred to or in sections 6 and 7 of the act, which relate particularly to the cancellation of leases, which authorizes the Superintendent of Public Works to cancel a lease solely for the reason that the lessee has not seen fit to make use of the property covered by the lease or of the rights granted to him under the terms of the lease instrument.

It is not the desire or purpose of this office to control the discretion of the Superintendent of Public Works with respect to any matters officially reposed in him under the provisions of this act. However, when, as in the cases here presented, the reasons assigned by the lessee for the cancellation of these leases are not such as to show affirmatively that the cases presented come within the provisions of this act, there is nothing that I can do as your legal adviser other than to disapprove the findings made by your predecessor directing the cancellation of these leases.

Under the provisions of sections 6 and 7 of this act, the Superintendent of Public Works is authorized to cancel a canal land or water lease where from the facts appearing in the application and from those

obtained by the Superintendent upon his investigation, it appears that the lessee can no longer economically use land or water covered by the lease. There is nothing in the applications for the cancellation of these leases or in the findings made by the Superintendent of Public Works to show that the failure of the lessee to make use of the property and rights granted to it by the leases was in any way due to economic conditions. It may well be that complete development of the facts relating to these matters will show that the lessee was unable to avail itself of its rights under these leases by reason of economic conditions. If these are the facts they should, of course, be set out in the application and the Superintendent of Public Works upon investigation should be fully satisfied that such facts exist before he makes any order directing the cancellation of these leases or of either of them. For the reasons above stated, I am returning the findings above referred to without my approval and I am herewith returning the same, together with the other files submitted.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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5665.

APPROVAL—APPLICATION FOR REDUCTION OF CURRENT  
AND DELINQUENT RENTALS ON LEASE TO OHIO  
CANAL LANDS AT AKRON, OHIO—CANAL BUILDING  
COMPANY OF AKRON, 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 finding made by your immediate predecessor in office directing a reduction in the amounts of current and delinquent rentals on a lease executed to The Canal Building Company of Akron, Ohio, by which there was leased and demised to said lessee certain parcels of Ohio Canal lands at Akron, Ohio, for building purposes. This lease was executed under date of September 13, 1922, and, apparently, a building of some kind was erected upon the canal lands covered by the lease. In this connection, it is noted that in the application for the adjustment of the delinquent and current rentals on this lease it is stated that out of nine store rooms erected on the leased lands only one was occupied at the time of the application and that this tenant was paying no rent whatever under his