

5640.

APPROVAL—BONDS OF CITY OF YOUNGSTOWN, MAHON-
ING COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, May 28, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5641.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO,
\$3,000.00.

COLUMBUS, OHIO, May 28, 1936.

State Employes Retirement Board, Columbus, Ohio.

5642.

DISAPPROVAL—LEASE TO LAND IN RICHLAND TOWNSHIP,
DEFIANCE COUNTY, OHIO—THE DEFIANCE COUNTY
METROPOLITAN PARK BOARD.

COLUMBUS, OHIO, May 28, 1936.

HON. L. WOODDELL, *Commissioner, Division of Conservation, 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 with which there is submitted for my examination and approval a certain land lease in triplicate, executed by you as Conservation Commissioner, acting for the state of Ohio, to The Defiance County Metropolitan Park Board. By this lease instrument there is leased and demised to the lessee above named for park and recreational purposes and for a term of two years a certain tract of real estate now owned by the state of Ohio under the supervision of the Division of Conservation, which is situated between the center line of U. S. Highway No. 24 and the northerly low water mark of the Maumee River, extending from the Defiance-Henry County line northwesterly to the Fort Defiance dam, and which is more particularly described as being parts of the Fractional North-half of Sec-

tion 22, Fractional North-half of Section 23, and part of the Fractional Northwest Quarter of Section 24, in Township 4 North, Range 5 East, Richland Township, Defiance County, Ohio, and containing 40.59 acres of land, more or less.

Upon examination of this lease, I find that I am unable to approve the same for the reason that the statutory provisions relating to the Division of Conservation and prescribing and defining the powers, authority and duties of the several boards and officers of the Division, do not confer any independent authority upon the Conservation Commissioner to execute a lease of this kind.

By Section 1438-1, General Code, as enacted by the 88th General Assembly in Amended Senate Bill No. 133, setting up the Division of Conservation as a separate division of government in the Department of Agriculture, it is provided that :

“The conservation council shall have and take the general care, protection and supervision of the state parks known as Lake St. Marys, Portage Lakes, Lake Loramie, Indian Lake, Buckeye Lake, Guilford Lake and all other state parks and lands owned by the state or in which it is interested or may acquire or become interested, except lands, the care and supervision of which are vested in some other officer, body, board, association or organization.”

It is, perhaps, pertinent to note in this connection that under the provisions of Section 472, General Code, as the same is amended in the act of the legislature above referred to, “all lands and waters now or hereafter dedicated and set apart for public park or pleasure resort purposes, or which may hereafter be acquired for such purposes, shall be under the control and management of the conservation council, who shall protect, maintain and keep them in repair.” Section 472-1, General Code, provides :

“The conservation council shall exercise all powers and duties heretofore conferred by law upon the superintendent of public works with respect to the control, management, lease and sale of swamp, marsh, overflow lands and all other lands within the state to which the state has or should have the title, except canals and public works and institutional lands, but no land lease or sale of lands shall be made except upon the written approval of the governor and the attorney general.”

The tract of land set out and described in this lease instrument is land which is owned by the state and which, under the law, is under the supervision of the Conservation Council; and under the provisions of Sec-

tions 1438-1 and 472-1, General Code, the Conservation Council is authorized to effect a proper lease of this property if, acting as a body, at a lawful meeting it sees fit to enter into such lease and evidences its action by a resolution duly carried into its minutes.

It appears, however, that the lease here in question is executed by you as an exercise of the independent power and authority conferred upon you as Conservation Commissioner. The only independent power or authority which is conferred upon you as Conservation Commissioner to execute leases of lands owned by the State, is that conferred upon you by Section 471, General Code, as amended in the Conservation Act. This section reads as follows:

“No state lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake or Portake lakes shall ever be sold but the conservation commissioner 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.”

In an opinion of this office directed to the then Commissioner of the Division of Conservation, Opinions of Attorney General, 1930, Vol. I, page 375, it was held, upon a consideration of the statutory provisions above noted, that:

“Leases of state lands adjacent to the reservoirs mentioned in Section 471, General Code, should be executed on behalf of the state of Ohio by the Conservation Commissioner. Leases of such other state lands as, under the provisions of Section 472-1, General Code, are within the jurisdiction of the Conservation Council, should be executed in such manner as the Conservation Council may by resolution direct.”

In other words, as above noted, the authority of the Conservation Commissioner to execute leases of state lands is limited to that conferred upon him by Section 471, General Code; and leases of all other state lands under the supervision of the Conservation Council are to be executed by and in the name of that body, acting for the state of Ohio and in such manner as that body may by resolution direct.

On the considerations above noted, this lease is disapproved and the same, together with the duplicate and triplicate copies thereof, are herewith returned to you.

Respectfully,

JOHN W. BRICKER,
Attorney General.