

instances as authority for such rule by reason of the statement in the alternative.' See also *Davies, ex rel.*, vs. *Scherer*, 11 O. C. C. (n. s.) 209.

The case of *Hulse vs. State*, supra, involved the construction of Rev. Stats. 5185 and 5188, relative to selecting and striking juries, and the latter statute read in part 'if the clerk, auditor or recorder is interested in the cause, sick, absent from the county, related to either of the parties, or does not stand indifferent between them, a judge entitled to hold such court may in term time or vacation appoint some judicious disinterested person to take the place of the officer so disqualified. * * *'

It is apparent from an examination of this statute that a specific manner is set forth relative to the action to be taken in case the county officials mentioned in such section are unable or disqualified to act, which section would control Rev. Stat. 4949, analogous to Section 9, General Code, which read at that time:

'A duty enjoined by statute upon a ministerial officer and an act permitted to be done by him may be performed by his lawful deputy.'

A consideration of the foregoing principles leads to the conclusion that the 1925 opinion, insofar as it prohibits a deputy auditor from performing the duties of the county auditor on the county budget commission, is not tenable since there is no designated method to be followed in case of the inability on the part of the county auditor to serve on the county budget commission. It is also evident that Section 9, General Code, above quoted, confers a larger scope of authority upon deputies than that formerly conferred by Rev. Stat. 4949."

Upon careful consideration of the position last taken by this office upon the subject matter of your inquiry, I am constrained to affirm the same.

It is accordingly my opinion in specific answer to your inquiry that the chief deputy county treasurer may, in the absence of the treasurer, serve as member of the county budget commission.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3606.

APPROVAL—CANAL LAND LEASE EXECUTED TO THE GUMMED PRODUCTS COMPANY OF TROY, OHIO, FOR LAND IN TROY, MIAMI COUNTY, OHIO.

COLUMBUS, OHIO, December 10, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You recently submitted to this office for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said Department, to The Gummed Products Company, a corporation, of Troy, Ohio. By this lease, which is one for a term of ninety-nine years, renewable forever, and which provides for an annual rental of \$96.00, subject to the reappraisal of the land for rental purposes at the

end of each fifteen-year period, there is leased and demised to the lessee above named the following described property located in the City of Troy, Miami County, Ohio:

Beginning at the point of intersection of the southwesterly line of said canal property and the southeasterly line of Union Street in said city and running thence southeasterly with the said southwesterly line of said canal property six hundred forty-eight (648') feet, more or less to a state marker, that is seventy (70') feet southwesterly from station 8308, of the said canal survey; thence southeasterly with said southwesterly line of said canal property, eighty-eight (88') feet, more or less, to the northwesterly corner of a lease granted to The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, under date of November 9, 1927; thence southeasterly with the northerly line of the said railway lease ninety-nine and six-tenths (99.6') feet, more or less, to the easterly line of said canal property; thence northerly one hundred (100') feet, more or less, to the northeasterly line of said canal property; thence northwesterly with the said northeasterly line three hundred ninety (390') feet, more or less, to a state marker that is thirty-three (33') feet northeasterly from Station 8305, of said canal survey; thence northwesterly with the said northeasterly line one hundred (100') feet to a state marker that is twenty-one (21') feet northeasterly from Station 8304, of said canal survey; thence northwesterly with the said northeasterly line of said canal property, three hundred and six (306') feet, more or less, to the said southeasterly line of Union Street in said city; thence southwesterly with the said southeasterly line of Union Street, one hundred ten (110') feet, more or less, to the place of beginning, and containing eighty-two thousand, three hundred sixty-eight (82,368) square feet, more or less.

This lease, I assume, is one executed by you under the provisions of the DeArmond Act which was enacted by the 89th General Assembly under date of April 9, 1931, and which went into effect on August 6, 1931. This act, which provides for the abandonment for canal and hydraulic purposes of that portion of the Miami and Erie Canal from the corporation line of the City of Middletown, Butler County, Ohio, to a point in Providence Township, Lucas County, Ohio, further provides for the designation of such parts of said abandoned canal lands as may be needed for state highway purposes and for the lease to municipal corporations and other political subdivisions of such parts of these canal lands as may be desired for this purpose and are not required for state highway purposes. However, section 19 of said act, which has been carried into the General Code as section 14178-45, provides:

"At the end of two years from the date at which this act becomes effective, any portion of said abandoned Miami and Erie canal that has not been designated by the director of highways as necessary for state highway improvements under the terms of this act, or has not been leased for public park purposes, to any of the parties herein authorized to make application to lease portions of said abandoned canal for public park purposes, may be appraised by the superintendent of public works at its true value in money, and leased to responsible parties for a term

of fifteen years and multiples thereof up to ninety years, or for a term of ninety-nine years renewable forever, subject to the approval of the governor and attorney general, and the annual rental therefore shall be six per cent of the appraised value thereof, as determined by said superintendent of public works."

Inasmuch as more than the two years have elapsed since the effective date of this act, I assume that the canal lands here in question have not been designated for highway purposes and that no application has been made by the City of Troy or by any other political subdivision for the lease of these lands or any part thereof for park purposes. With this assumption, it clearly appears that you are authorized to execute this lease under the section of the DeArmond Act above quoted.

Upon examination of the lease, I find that the same has been properly executed by you and by the Gummed Products Company, the lessee therein named, by the hand of the vice-president of said company pursuant to authority conferred upon said officer for the purpose by a resolution of the board of directors of the company passed November 28, 1934. I further find, upon examination of the provisions of the lease and of the conditions and restrictions therein contained, that the same are in conformity with the provisions of the act of the 89th General Assembly, above referred to, and with the provisions of other statutory enactments relating to leases of this kind. I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3607.

OLD AGE PENSION LAW—"TRUST DEED" IS MORTGAGE AND SHOULD BE RECORDED IN RECORD OF MORTGAGES BY COUNTY RECORDER.

SYLLABUS:

1. *It is the duty of a county recorder to record in the proper record upon presentation therefor, an instrument denominated a "trust deed", which purports to convey to the Division of Aid for the Aged, in the Department of Public Welfare of the State of Ohio, certain real estate or an interest therein, in trust, for the uses and purposes therein mentioned, and given in pursuance of Section 1359-6, General Code, by applicants for aid under the Old Age Pension Law, without its first having been presented to the county auditor and endorsed by him: "transferred" or "transfer not necessary." Inasmuch as such an instrument is not a deed of absolute conveyance of real estate or a conveyance of minerals or mineral rights, its recordation is not controlled by the terms of Section 2768, General Code.*

2. *The instrument described in Paragraph 1, of this syllabus, is not such a conveyance as will authorize a county auditor on application and presentation thereof, to transfer the land described therein, on the tax list, from the name in which*