

5341.

CANAL LANDS—SUPT. OF PUBLIC WORKS REQUIRED TO REAPPRAISE BEFORE SALE—APPROVAL OF CINCINNATI RAPID TRANSIT COMMISSIONERS UNNECESSARY.

SYLLABUS:

*The Superintendent of Public Works may lease or sell canal lands now held by the state which were relinquished to the state by the city of Cincinnati under the provisions of Amended Senate Bill No. 123, 112 O. L., 210, but is required to reappraise such lands before making such sale or lease. In view of the provisions of Section 3 of House Bill No. 4 found in 113 O. L., 21, said Superintendent of Public Works is no longer required to obtain the approval of such appraisement by the Board of Rapid Transit Commissioners of the city of Cincinnati.*

COLUMBUS, OHIO, April 9, 1936.

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

DEAR SIR: Acknowledgment is made of your recent communication which reads:

“By the terms of an act of the 79th General Assembly (Amended Senate Bill No. 123), passed May 17th, 1911, the state of Ohio leased to the city of Cincinnati, by lease bearing date of August 29th, 1912, that portion of the Miami and Erie Canal between the east side of Broadway to a point three hundred (300') feet north of Mitchell Avenue, in said city, for public street, boulevard, sewerage and subway purposes, and by a subsequent act passed May 17th, 1915, a lease bearing date of March 28th, 1922, the portion of the Miami and Erie Canal between a point three hundred (300') feet north of Mitchell Avenue and a point in the city of St. Bernard, Ohio, 1,000 feet north of the Baltimore and Ohio Railway crossing over said canal in St. Bernard, Ohio.

Much of the canal property included in the lease, on account of the abrupt turns in the canal property, could not be used either for street or subway purposes, so that the city was compelled to acquire additional rights-of-way in order to eliminate the objectionable features encountered in the construction of its proposed subway, and later in its Central Parkway Boulevard.

The city was anxious to be released from the payment of rental on the canal lands which it could not use for the purposes designated in its lease, and asked to be relieved from the payment of rental upon these surplus canal lands.

After consultation between representative of the Department of Highways and Public Works and the Rapid Transit Commissioners of the city of Cincinnati, it was decided to have an act passed authorizing the city of Cincinnati to surrender to the state these surplus canal lands for which it had no use.

Accordingly, Amended Senate Bill No. 123, as referred to above, was passed April 20th, 1927, by the 87th General Assembly. By the terms of Section 2 of the act, the city of Cincinnati, by its Board of Rapid Transit Commissioners, was authorized to adopt a resolution accurately describing those parts of its leased Miami and Erie Canal lands that would not be required for subway and boulevard purposes, and to file with the superintendent of public works an accurate description of each and every tract not required for such purposes, accompanied by plats showing each and every tract of land described in such resolution with a tentative appraisalment of such tracts by the Rapid Transit Commissioners of said city of Cincinnati.

Section 3, of the act, required the Director of Highways and Superintendent of Public Works to make the final appraisalment, and in order to avoid the duplication of appraisalments, it was decided that the city of Cincinnati, by its Rapid Transit Commission, should appoint one appraiser and the Director of Highways and Superintendent of Public Works, should select the other appraiser.

Thereupon, Lewis R. Smith was appointed to represent the city of Cincinnati and E. E. Booton of the Department of Public Works was designated to represent the state. The appraisers placed a valuation on some two hundred separate parcels of these surplus canal lands, with an aggregate valuation of \$235,768.86, and from this amount \$13,967.61, of assessments levied against these parcels, by the city of Cincinnati for the improvement of Central Parkway was deducted, leaving a net appraisalment of \$221,801.25, and this appraisalment was accepted by the Director of Highways and Public Works on behalf of the state and likewise by the Cincinnati Rapid Transit Commission on behalf of the city of Cincinnati, which relinquished all its interests in these surplus canal lands to the state of Ohio, by a deed duly authorized by its city council, and accepted by the state, after approval by the Attorney General.

One hundred of these parcels of surplus Miami and Erie Canal lands have been sold by the Department of Public Works for the sum of \$117,319.00, while thirty-one tracts have been leased on a valuation of \$22,910.00, and there are left sixty-nine parcels with a valuation of \$81,572.00, which Mr. Booton thinks can be sold for this amount and possibly more, when times become normal. Just now we are having a few inquiries for the purchase of some of these tracts.

Section 11, of Amended Senate Bill No. 123, referred to above, provides that after three years from the date at which the act became effective, all of the tracts of land relinquished to the state of Ohio, under this act that have not been sold or leased, the remaining tracts shall be reappraised, and thereafter sales and leases thereof shall be made on the basis of such reappraisalment.

Mr. Booton thinks this reappraisalment should be made by the Superintendent of Public Works under the provisions of Section 13965 of the General Code, and then leased or sold under the provisions of Section 9 of Amended Senate Bill No. 123, referred to above.

In order that there may be no mistake as to the method of procedure in the disposition of the remaining tracts of these canal lands, I respectfully request that you render an opinion as to how I am to appraise these lands preliminary to selling or leasing the same."

An examination of Amended Senate Bill No. 123, to which you refer, which is found in 112 O. L. 210, discloses that its purpose was to permit the city of Cincinnati to relinquish to the state of Ohio portions of the Miami and Erie Canal lands which had theretofore been leased by the state to said city under the act of the General Assembly passed May 15, 1911, and acts amendatory thereof and supplementary thereto. It appears that while the city had acquired said lands for the purpose of constructing a boulevard, much additional land had to be purchased and the city was desirous of reducing its obligation to the state. Said Amended Senate Bill No. 123 provided within itself for a complete scheme of transferring these lands to the state and while there were other general statutes that had application to the disposition of canal lands by your department, it would seem that this special act set up all of the machinery necessary in connection with the particular lands therein referred to.

As stated in your communication, said act provided for the appraisalment of the lands which the Board of Rapid Transit Commissioners of Cincinnati found to be unnecessary for subway or boulevard purposes.

The appraisalment under section 3 of the act was to be made by the Director of Highways and Superintendent of Public Works. When the appraisalment was completed, under section 4 it was certified to the Board of Rapid Transit Commissioners of Cincinnati and said Board was required to adopt a resolution agreeing to such valuations as it deemed reasonable and was to transmit to the Council of the city of Cincinnati and to said Director of Highways and Superintendent of Public Works a true copy of such resolution. Section 5 provided, after the receipt of a copy of the resolution of the Board of Rapid Transit Commissioners agreeing to valuations, that the Council of the city of Cincinnati, if it deemed advisable, should pass an ordinance relinquishing to the state of Ohio all of the right, title and interest of the city in and to the tracts of land, the valuations of which the Board of Rapid Transit Commissioners had agreed to. Thereafter, provision was made for the execution of a deed relinquishing said lands to the state of Ohio, said deed to be delivered to the Director of Highways and Superintendent of Public Works who in turn was required to submit the deed to the Attorney General for approval. Section 9 of the act provided that after the deed was recorded the Director of Highways and Superintendent of Public Works should proceed to sell or lease the several tracts so relinquished.

In this connection, it will be noted that at that time the Director of Highways and Superintendent of Public Works was one and the same person. However, since the amendment of section 154-40, General Code, 112 O. L., 430. the duties in this respect would now devolve upon the Superintendent of Public Works, as this act separated the powers and duties of the Director of Highways and the Superintendent of Public Works.

The abutting owners were given the privilege of purchasing such tracts at the value thereof fixed by the Director of Highways and Superintendent of Public Works and agreed to by the Board of Rapid Transit Commissioners. If the abutting owners declined to purchase or lease such tracts within three months after the recording of the deed, the Director of Highways and Superintendent of Public Works was authorized to sell for the best price obtainable therefor, or lease same perpetually, subject to the approval of the Governor and the Attorney General, provided that the sale price should not be less than the appraised value thereof, and provided that the annual net rental should not be less than six per cent of the appraised value. It was also further provided that all assessments levied by the city of Cincinnati or the Board of Rapid Transit Commissioners for the boulevard improvement should be assumed and paid by the purchasers or lessees of such tracts and that no part of such assessments should be collected from the state.

Section 10 of the act provided for the semiannual deductions from the total valuations of the leases granted by the state to the city of Cin-

cinnati, of the gross amount of the sales and leases of such relinquished lands, thereby reducing the principal of said leases at the end of each six months.

Section 11, to which you refer, provided:

“If after three years from the date at which this act becomes effective, all of the tracts of land relinquished to the state of Ohio, under this act, shall not have been sold or leased, the remaining tracts shall be re-appraised and thereafter sales and leases thereof shall be made on the basis of such re-appraisalment.”

From the above, it could easily be concluded that in view of the fact that the city of Cincinnati under the terms of this act was interested in the price obtained from the sales made by the state, it would be interested in the re-appraisals and therefore it would be the intent of the act that the appraisals made after the expiration of three years should be made in the same manner that they were originally made, that is, with the approval of the Board of Rapid Transit Commissioners.

However, in connection with your inquiry, it would seem proper to consider the provisions of House Bill No. 4, found in 113 O. L., 21, which act was for the purpose of changing and amending the leases to the city of Cincinnati by the reduction of the rental provided for in leases of part of the Miami and Erie Canal executed under authority of the act passed May 15, 1911, 102 O. L., 168, and laws amendatory thereof and supplementary thereto. Section 3 of this act expressly stated:

“The state of Ohio is hereby authorized to retain for its own use, all monies received from the sale or lease of surplus Miami and Erie canal lands in the city of Cincinnati, Hamilton County, Ohio, not required for subway, boulevard or sewer purposes by said city, and which were conveyed to the state of Ohio by the said city of Cincinnati, Ohio, by deed dated October 24th, 1928, and recorded in deed book No. 1476, page 221, Hamilton county deed records, in accordance with the provisions of Amended Senate Bill No. 123, as passed by the 87th General Assembly of Ohio, on the 20th day of April, 1927 (O. L. 112, pages 210-214).”

From the above, it would seem that by the terms of the last act mentioned, the city no longer has any interest whatever in the lands to which you refer which were duly relinquished to the state, and all moneys arising from the sale or lease of such lands are to be paid into the state treasury.

Inasmuch as the sole purpose in providing that the Board of Rapid Transit Commissioners should approve the appraisal, was to protect the

interest of the city of Cincinnati in said property and there no longer appears to be any such interest, it would seem that said act has been amended by implication in the act found in 113 O. L., 21, hereinbefore referred to. It would therefore seem that the Superintendent of Public Works may appraise the land as required in said act without being under the necessity of having said appraisal approved by the Board of Rapid Transit Commissioners.

In your communication you refer to Sections 13965, et seq., General Code. These sections authorize the Superintendent of Public Works to lease and sell certain canal lands held by the state. Under the terms of these sections the Superintendent appraises such lands at their true value. Whether the Superintendent appraises them by the general power in the sections last above mentioned or appraises them under the power given in Amended Senate Bill No. 123, it is believed that it will be the same result, in view of the conclusion that the Board of Rapid Transit Commissioners no longer is required to approve such appraisement.

As suggested in your communication, the power of the Superintendent of Public Works to dispose of said lands under the provisions of Section 9 would still seem to be in effect and should guide the Superintendent in making such sales or leases.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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APPROVAL—BOND FOR THE FAITHFUL PERFORMANCE OF  
HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR—RICHARD TILTON.

COLUMBUS, OHIO, April 9, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: Your secretary has submitted for my approval as to legality of form the following faithful performance bond:

Richard Tilton, Resident District Deputy Director—The Ohio Casualty Insurance Company.

This bond evidently entered into pursuant to Sections 1183 and 1182-3, General Code, was formerly disapproved in Opinion No. 5250, March 16, 1936, for the reasons, first, that the power of attorney authorizing A. B. Caldwell to sign bonds on behalf of the Ohio Casualty Company did not