

Finding said Supplemental Resolution in proper legal form, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2695.

APPROVAL—CERTAIN LEASE, EXECUTED TO THE STATE OF OHIO BY GEORGE F. SHOAF OF OAK RUN TOWNSHIP, MADISON COUNTY, OF FARM LANDS FOR GAME REFUGE PURPOSES.

COLUMBUS, OHIO, May 21, 1934.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, with which you submit for my examination and approval a certain lease, in duplicate, executed to the State of Ohio by one George F. Shoaf of Oak Run Township, Madison County, Ohio.

By this lease instrument there is leased and demised to the state for a term of five years, certain farm lands, aggregating in amount, 740 acres, for game refuge purposes, and in this connection it is noted that, acting under the authority conferred upon it by Section 1435-1 General Code, the conservation council, acting through you, as Commissioner, has set aside this property for the purpose of a state game and bird refuge.

Upon examination of this lease, I find that the same has been properly executed and acknowledged by the above named lessor and by yourself, acting on behalf of the conservation council. I likewise find that the provisions of this lease are in conformity with Section 1435-1 and other sections of the General Code 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 the duplicate copy thereof, both of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2696.

DISAPPROVAL—CANCELLATION OF LEASE OF ABANDONED MIAMI AND ERIE CANAL LANDS.

COLUMBUS, OHIO, May 21, 1934.

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

DEAR SIR:—You have submitted for my approval, the report of your finding

upon an application made by one Fred A. Clawson for an adjustment of unpaid rentals on a lease of a parcel of abandoned Miami and Erie Canal Lands in the city of Sidney, Shelby County, Ohio, executed to said Fred A. Clawson under date of March 26, 1929.

The lease here in question is one for a term of 15 years, expiring March 26, 1944, and the same provides for an annual rental of \$84.00.

The parcel of land, covered by this lease, was leased to said Fred A. Clawson, the lessee therein named, for business purposes, it being the purpose and intention of Clawson at the time to erect upon said parcel of land a building which was to be used by him for business purposes.

By reason of economic conditions which have existed since this lease was executed, the lessee of this land has not been able to finance the erection and construction of the contemplated building and for this reason he has not been able to derive any monetary or other benefit from his lease or from the property.

It appears further that he has been unable to keep up his payments of the annual rental provided for in said lease and that he is now delinquent in the sum of \$168.00, covering the period of two years last past.

In the application, filed by Fred A. Clawson, he requests an adjustment in the amount of said unpaid rentals and a cancellation of the lease. This application filed by the lessee for the purpose of obtaining the relief above noted, was filed with you on or about the third day of January, 1934, pursuant to the provisions of House Bill No. 467, which was passed by the 90th General Assembly under date of June 8, 1933, and which became effective on the 11th day of October, 1933. 115 O. L. 512.

By the provisions of this act, the Superintendent of Public Works, with the approval of the Governor and Attorney General, is authorized to make an adjustment of unpaid rentals on existing canal land leases, and in proper cases to direct the cancellation of the same. In this connection, Section 6 of said act provides that if, at any time, any lessee of the State of Ohio can no longer economically use the canal lands leased to him by the State of Ohio, such lessee may file with the Superintendent of Public Works, at least 60 days prior to any rental payment date, a sworn statement of facts pertaining to such lease, setting forth the reasons why such lease cannot be used any longer by such lessee, and requesting the cancellation of the lease.

By Section 7 of this Act it is provided that upon receipt of such sworn statement the Superintendent of Public Works shall make a thorough investigation of all the facts pertaining to such lease and if he is satisfied that such representations are true, and that all accrued rentals due thereon have been paid in full up to the next semi-annual rental payment date, he may, upon approval of the Governor and Attorney General, direct the cancellation of such lease and enter a notation thereof upon the triplicate copies thereof.

It appears from the application in this matter, as well as the finding made by you that this lessee is delinquent in the payment of rentals from May 1, 1932, to May 1, 1934, amounting to the sum of \$168.00 and with respect to such delinquent rentals you have made an order reducing the same to \$112.00, and you have made a further order cancelling this lease as of May 1, 1934, "Upon the conditions that the said lessee shall comply with all the above findings and requirements relative to the payment of all accrued rentals due prior to the effective date."

It seems quite clear from this language that it was and is your intention

to make effective the cancellation of this lease, upon the payment by the lessee of the sum of \$112.00, the reduced amount of the delinquent accrued rentals. As to this, it seems quite clear, under the provisions of Section 7 of the Act of the 90th General Assembly, above referred to, that you are authorized to direct the cancellation of a lease, only upon the condition that the lessee makes payment in full of all rentals which have accrued, under the lease, up to the next semi-annual rental payment date, which, in this case, is May 1, 1934. The amount of such accrued rentals is the sum of \$168.00; and although under the provisions of this Act, you would have been authorized for good cause shown, to make an adjustment of accrued rentals under this lease and to reduce the same, if no cancellation of the lease had been requested, you were not, under the provisions of this Act, authorized to cancel the lease otherwise than upon the condition that the lessee pay the full amount of the accrued rentals on the lease which, as above noted, is the sum of \$168.00.

For the reasons above noted, I am unable to approve your finding, directing the cancellation of this lease in this proceeding, and the same, together with the other files relating to this matter, are herewith returned to you, without my approval endorsed thereon.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2697.

APPROVAL—PROCEEDINGS RELATING TO APPLICATION MADE BY THE BALTIMORE AND OHIO RAILROAD COMPANY OF BALTIMORE, MARYLAND, FOR A REDUCTION IN THE ANNUAL RENTAL UPON LEASE OF OHIO AND ERIE CANAL LANDS IN AKRON, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, May 21, 1934.

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

DEAR SIR:—You have submitted for my examination and approval the report of your finding on an application made by the Baltimore and Ohio Railroad Company of Baltimore, Maryland, for a reduction in the annual rental to be paid by said company upon the lease of Ohio and Erie Canal lands in the city of Akron, Summit County, Ohio, which canal lands said company is now occupying and using for railroad purposes.

The lease here in question, which bears Serial No. O. & E. 7, was executed, under date of May 8, 1930, for a term of 15 years, expiring May 7, 1945, and the same provided for an annual rental of \$230.00.

The application for a reduction in the amount of the annual rental, provided for in this lease, was filed with you on or about the 27th day of November, 1933, pursuant to the provisions of House Bill No. 467, which was passed by the 90th General Assembly, under date of June 8, 1933, and which became effective on the 11th day of October, 1933. 115 O. L. 512.