

<i>Indian Lake</i>	Valuation
To William Bosken, walkway and dock-landing-----	\$100 00
Violet C. Bryan, cottage site and landing-----	1,666 66

<i>East Reservoir—Akron, Ohio</i>	Valuation
To Cora and Geo. Miller, boat-house and dock-landing-----	\$100 00

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,
C. C. CRABBE,
Attorney General.

3466.

TAXATION—LAKE FRONT LANDS LEASED UNDER PROVISIONS OF SECTION 3699-1 GENERAL CODE BY CITY OF CLEVELAND NOT SUBJECT TO TAXATION AS PERSONAL PROPERTY.

SYLLABUS:

Piers and wharves constructed, used and operated on submerged or artificially filled lands in Lake Erie, the title to which is in the State of Ohio, and leased under the provisions of section 3699-1, General Code, by the city of Cleveland to navigation companies, in aid of navigation and water commerce, for a period of forty years without right of renewal, are not subject to taxation; but any interests of the lessees under the lease in the structures and other improvements erected upon said land are subject to taxation as personal property.

COLUMBUS, OHIO, June 21, 1926.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is hereby made of your recent communication, which reads as follows:

“Along herewith we send you a copy of a lease entered into by and between the City of Cleveland and the C. and B. and D. and C. Companies and which covers part of the lake front in the city of Cleveland, known as the East Ninth Street Pier and the structures thereon. The Commission is called upon to pass on the liability of this property to taxation.

“Along with the lease we are transmitting to you two briefs which have been filed with us, one by Goulder, White and Garry, representing the boat companies, the other by H. R. Cuyler, representing the auditor of Cuyahoga County

“Involving as it does the rights of the State, of the City of Cleveland and of the boat companies, we desire to submit the matter to you for your opinion.

“In the event that the lease itself does not disclose sufficient information to enable you to arrive at a determination, we will be glad to furnish you with any additional details which may be necessary to enable you to advise us.”

The lease in question discloses that on the 26th day of May, 1913, the city council of the city of Cleveland, Ohio, passed an ordinance, being No. 29355-a, by which it authorized the Director of Public Service of the city of Cleveland to lease to The Detroit & Cleveland Navigation Company, a corporation duly chartered and organized under the laws of the state of Michigan, and The Cleveland & Buffalo Transit Company, a corporation duly chartered and organized under the laws of the state of Ohio, certain real estate belonging to the said city of Cleveland, upon certain terms and conditions. Said real estate in question is described as follows:

"Situated in the city of Cleveland, county of Cuyahoga, and state of Ohio, to-wit: the westerly of the two piers constructed by the city of Cleveland at the foot of E. 9th Street and the rights appurtenant thereto, necessary to widen and extend the said westerly pier in a westerly direction until the same is a uniform width of 300 feet."

The lease extends from the 1st day of July, 1913, until the 1st day of July, 1953.

The lessees are authorized to widen the westerly of the two piers constructed by the lessor at the foot of East 9th Street until the same is of a uniform length of 300 feet, and to construct and erect on said westerly pier, when widened as hereinbefore provided, such passenger stations, ticket offices, package-freight warehouses and railroad tracks as would be necessary for the use of said pier as a suitable place for boat landings and the transaction of package-freight and passenger business.

It is further provided that all of said proposed structures and all of the work to be done at the expense of the lessee shall be approved by the Director of Public Service.

Said lease further provides that the amount that the lessees shall be required to so expend under the terms of the lease shall be not less than \$205,000.00 nor more than \$225,000.00. It is further provided that when the work of reconstructing and widening said pier and the erection of the buildings thereon is completed, that the lessees shall have the sole right to use said pier.

It is then provided that the lessor may terminate the lease upon the giving of certain notice if at any time said lessor wishes to change the use of the pier for re-arranging or reconstructing the harbor facilities of the city, for constructing lake front boulevards, or parks, or for carrying out any other public purpose; but the said lessor shall not terminate the rights granted in this lease for the purpose of regranteeing them to others for like or similar purposes.

It is further provided that if said lessor shall terminate the rights granted in said lease prior to the first day of July, 1953, the lessor shall be bound to acquire by purchase from the lessees the permanent constructions and buildings erected by them, including the widened and rebuilt westerly pier by paying to the lessee the amount expended by them for the widening and reconstructing of said pier, and the erection of the buildings thereon, less the sum of \$3,500.00 per year for each year of the first ten years from and after the 1st day of January, 1914, that shall have elapsed before the date of the taking effect of the termination of said lease; \$4,500.00 per year for each of the second ten years after said date, which shall have so elapsed; \$5,500.00 per year for each of the third ten years after said date, which shall have so elapsed, and a proportionate part of the remainder for each of the remaining years for the term of this lease.

The lessor is given option to buy all of said improvements as hereinbefore stated.

The money expended by the lessees in making improvements upon said westerly pier, and erecting structures thereon as aforesaid, shall constitute and be deemed rent paid in advance for the entire remaining term of this lease, from and after the

1st day of January, 1914; and at the expiration of these leases, the said pier and all property of every kind affixed thereto, and all permanent improvements made thereon, shall without charge become the property of the lessor.

The lessees covenant and agree to keep in constant repair the pier and all of the buildings which may be erected thereon pursuant to this lease, and at no time permit said improvements to deteriorate or depreciate below seventy per cent of their reconstruction value, said maintenance to be at the sole cost and expense of the lessees.

It is also covenanted and agreed that in case the lessor shall not have acquired the property and terminated the lease prior to the 1st day of July, 1953, then on said day, all of the improvements and encroachments of said westerly pier and all of the buildings and constructions thereon shall be and become the sole property of the lessor and all rights under this lease shall cease and terminate.

It is understood that this question arises upon the complaints of the D. & C. and C. & B. Navigation Companies to the taxation of lands used by them as piers, docks, wharves, freight terminals and passenger stations, and owned in fee by the State of Ohio, but leased for a period of forty years from the city of Cleveland under section 3699-1 of the General Code.

Section 3699-1 of the General Code, reads as follows :

“All municipal corporations within the corporate limits of which there is or may hereafter be included part of the shore of the waters of Lake Erie shall have the power, in aid of navigation and water commerce, to construct, maintain, use and operate, or lease the right to construct, maintain, use and operate, piers, docks, wharves and connecting ways, places, tracks and other water terminal improvements with buildings and appurtenances necessary or incidental to such use, on any land belonging to the corporation held under title permitting such use and also over and on any submerged or artificially filled land or lands made by accretion resulting from artificial encroachments, title to which is in the State of Ohio, within the territory covered or formerly covered by the waters of Lake Erie in front of littoral land within the limits of said corporation whether said littoral land is privately owned or not. * * * ”

Section 3699-a of the General Code reads as follows :

“It is hereby declared that the waters of Lake Erie within the boundaries of the state together with the soil beneath and their contents do now and have always, since the organization of the State of Ohio, belonged to the State of Ohio as proprietor in trust for the people of the State of Ohio, subject to the powers of the United States government, the public rights of navigation and fishery and further subject only to the right of littoral owners while said waters remain in their natural state to make reasonable use of the waters in front of or flowing past their lands, and the rights and liabilities of littoral owners while said waters remain in their natural state of accretion, erosion and avulsion. Any artificial encroachments by public or private littoral owners, whether in the form of wharves, piers, fills or otherwise beyond the natural shore line of said waters not expressly authorized by the general assembly, acting within its powers, shall not be considered as having prejudiced the rights of the public in such domain. Nothing herein contained shall be held to limit the right of the state to control, improve or place aids to navigation in the other navigable waters of the state or the territory formerly covered thereby.”

Said lease also provides that :

"At the expiration of this lease, said pier and other property of every kind affixed thereto, and all other permanent improvements made thereof, shall without charge, become the property of the lessor."

It is evident from the foregoing that said improvements were affixed with the intention that they should not become a part of the realty forthwith, and the said boat companies are the owners thereof, and said improvements are therefore taxable against the owners as personal property.

What has been said with reference to the improvements is true with reference to the widening of the pier, and the same provisions apply; the pier was state property before it was leased to the boat companies; its improvement did not change its ownership.

No provision has been made in our statutes for the levy and assessment of a tax upon public property, whether it be state, city, county or township property; in the absence of said provision there is no machinery provided in which to levy and collect a tax against such property.

It is therefore the opinion of this department that the land in question herein is not subject to taxation, but any interests of the lessees under the lease in the structures and other improvements erected upon said land are subject to taxation as personal property.

Respectfully,
C. C. CRABBE,
Attorney General.

3467.

APPROVAL, BONDS OF CITY OF ASHLAND, ASHLAND COUNTY,
\$7,000.00.

COLUMBUS, OHIO, June 21, 1926.

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

3468.

APPROVAL, BONDS OF VILLAGE OF WOODSFIELD, MONROE COUNTY,
\$8,291.52.

COLUMBUS, OHIO, June 23, 1926.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.