

for general business purposes that portion of the abandoned Hocking Canal property located in the City of Lancaster, Ohio, designated as Tract No. 27, as shown by the plats of said canal property prepared by the City Engineer of the City of Lancaster under authority of House Bill No. 417, enacted by the 89th General Assembly of Ohio under date of April 10, 1931, 114 O. L. 536; which parcel and tract of land is more particularly described by metes and bounds in said lease.

As above indicated, this lease is executed under the authority of House Bill No. 417, enacted by the 89th General Assembly, which act provides that all applications for leases made under the provisions of the act shall have the recommendation of the Mayor of the City of Lancaster, Ohio, before being filed with the Superintendent of Public Works. It does not affirmatively appear in this lease by way of recital therein or otherwise that the application for this lease has been approved by the Mayor of Lancaster, Ohio. Assuming, however, that such is the case and finding that the lease has been properly executed, I am approving the same 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.*

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2581.

APPROVAL CONDITIONALLY—CANAL LAND LEASE EXECUTED  
TO FRANK E. HOGAN OF NEWCOMERSTOWN, OHIO.

COLUMBUS, OHIO, April 26, 1934.

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

DEAR SIR:—You have submitted for my examination and approval a Canal Land Lease in triplicate, executed by you as Superintendent for Public Works and as Director of said department, to one Frank E. Hogan of Newcomerstown, Ohio.

By this lease, which is one for a stated term of 15 years and which provides for an annual rental of \$15.00, payable semi-annually, there is leased and demised to the lessee above named the right to occupy and use for residence and agricultural purposes a parcel of the Ohio Canal property, including the full width of the bed and embankments thereof, located in Oxford Township, Tuscarawas County, Ohio, which parcel of land is more particularly described as follows:

Beginning at a line drawn at right angles to the transit line through station 2908 of the G. F. Silliman survey of said canal property, and running thence westerly with the lines of said canal property three hundred and fifty (350') feet, as measured along said transit line to station 2911 plus 50, of said survey, and containing ninety-hundredths (0.90) acres, more or less. Reserving therefrom any portion of the above described property that may be occupied by a public highway.

Upon examination of this lease, I find that, assuming that you are authorized to execute this lease to the person named as lessee therein, the same has been executed by you and by said lessee, except that your execution of this lease has been witnessed only by one person, whereas, regularly and properly, the execution of leases of this kind, by the Superintendent of Public Works, should be witnessed by two persons.

This lease is one executed under the authority of Amended Substituted Senate Bill No. 72 enacted by the 89th General Assembly, under date of April 29, 1931, and which went into effect on the 6th day of August, 1931.

Section 8 of said act provides that certain classes of persons and corporations therein mentioned shall have prior rights, with respect to the leasing of Ohio Canal Lands in Tuscarawas, Coschocton and Muskingum Counties, abandoned for canal purposes, contingent upon the condition that the persons and corporations, given such prior rights, with respect to leases of these abandoned canal lands, shall make application therefor within a stated time after the effective date of said act.

The only provisions of the section of the act above referred to which, in my opinion, can have any application in leases of this kind are:

3. "Municipalities shall have the first right to lease those portions of the canal lands herein abandoned for canal purposes, that are embraced in their applications filed with the superintendent of public works, and not included in the application of railroads, or the application of the owners of existing leases, providing the applications of such municipalities are filed within one year from the date at which this act becomes effective.

4. The owners of tracts abutting upon said canal property shall have the next right to lease the canal property adjacent to their lands, after the time limit herein stipulated has expired, providing, however, application therein is made by such owner within ninety days after the time limit herein prescribed shall have expired.

5. All tracts of said abandoned canal property lying within a municipality, but not included in the application of any one of the four classes enumerated above, and likewise the abandoned canal property lying outside the corporate limits of any municipality, may be leased by the superintendent of public works, who shall appraise such tracts at their true value in money for any purpose for which they can be used, and the annual rental shall be six per cent of such appraisalment."

With respect to the application of the above quoted provisions of this section to the lease here under consideration, it is observed that there is no recital in this lease to the effect that the lessee named therein is the owner of any tract or tracts of land abutting upon the parcel of Ohio Canal Land covered by this lease.

In this situation I can approve this lease only on the assumption, either that the lessee named is the owner of such abutting tract or tracts of land, or, if the lessee named is not the owner of such abutting property, that the owner or owners of such abutting property have not filed any application or applications for the lease of this parcel of Ohio Canal Land, within a period

of 90 days after the expiration of one year from the effective date of the act.

On these assumptions and subject to the correction to be made in the execution of the lease above noted, the same is hereby approved by me 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 to you.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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2582.

APPROVAL—LEASE EXECUTED TO THE BABCOCK AND WILCOX  
COMPANY, BARBERTON, OHIO, FOR THE PRIVILEGE OF IN-  
SERTING A PIPE LINE IN THE ERIE CANAL.

COLUMBUS, OHIO, April 26, 1934.

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

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate, executed by you, as Superintendent of Public Works and as director of said department to The Babcock and Wilcox Company, Barberton, Ohio.

By this lease, which is one for a stated term of five years from May 1, 1933, executed as a renewal of a former lease, there is granted and demised to said lessee the right and privilege of inserting into the level of the Ohio and Erie Canal, above Lock No. 1 and South of Portage Summit at Barberton, Ohio, a six-inch pipe for the purpose of drawing from the Ohio and Erie canal at this point water for manufacturing and fire protection purposes.

The annual rental reserved in this lease is the sum of \$564.00, payable in semi-annual installments with the provision that all water withdrawn from said canal, in excess of 58 million gallons, shall be paid for at the rate of 8 mills per thousand gallons.

This lease is one executed by you, as Superintendent of Public Works, under the authority conferred by Section 14009 General Code and the provisions of the lease are in conformity to the provisions of this section and of other statutory enactments relating to leases of this kind. In as much as the lease has been properly executed by you in your official capacity and by the lessee therein named, by the hand of its president, pursuant to the authority of a resolution by the board of directors of said company, this lease is hereby approved by me 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 hereby returned.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*