

106.

APPROVAL—CANAL LAND LEASE, STATE THROUGH DIRECTOR OF PUBLIC WORKS, TO CITY OF DEFIANCE, DEFIANCE COUNTY, OHIO, RIGHT TO OCCUPY AND USE FOR CITY BUILDING AND PARK PURPOSES, PORTION OF MIAMI AND ERIE CANAL LANDS AS DESIGNATED IN CITY OF DEFIANCE.

COLUMBUS, OHIO, February 7, 1939.

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

DEAR SIR: You have submitted for my examination and approval a canal land lease in triplicate executed by the State of Ohio through you as Superintendent of Public Works and as Director of said department to the City of Defiance, Defiance County, Ohio.

By this lease, which is one for a stated term of ninety-nine years, renewable forever, and which provides for the payment of an annual rental of \$118.00 during the first fifteen-year period of the term of the lease, there is leased and demised to said City of Defiance, Ohio, the lessee above named, the right to occupy and use for city building and park purposes that portion of the Miami and Erie Canal lands located in the City of Defiance, Ohio, that is more particularly described as follows:

First Tract: Beginning at the southerly line of Fourth Street and extending southerly to the northerly line of Fifth Street in said city; excepting therefrom any portion of the above described property now occupied by buildings.

Second Tract: Beginning at an iron marker at the southwest corner of Lot No. 117, and running thence easterly with the southerly line of said lot, seventy-two (72') feet, more or less, to the easterly line of the city building, located on Lot No. 116; thence northerly parallel with Perry Street, fifteen (15') feet; thence westerly parallel with the southerly line of said Lot No. 117, seventy-two (72') feet, more or less to the easterly line of Perry Street; thence southerly with the easterly line of Perry Street, to the place of beginning and containing ten hundred and eighty (1080) square feet, more or less.

Third Tract: Beginning at an iron marker at the northwest corner of Lot No. 116, and running thence easterly with the northerly line of said lot, seventy-two (72') feet, more or less, to the easterly line of the city building, located on Lot No. 116; thence southerly parallel with Perry Street, twenty-six (26') feet, more or less, to a point; thence westerly and parallel with

Third Street seventy-two (72') feet, more or less, to the easterly line of Perry Street; thence northerly along said easterly line of Perry Street, twenty-six (26') feet, more or less, to the point of beginning, and containing eighteen hundred and seventy (1870) square feet, more or less; also any other Miami and Erie Canal property that may be occupied by the city of Defiance for the purposes mentioned above or incidental thereto.

Authority for the execution of this lease and for the essential terms and conditions thereof is found in the provisions of the DeArmond Act, so-called, enacted by the 89th General Assembly under date of April 29, 1931, 114 O. L., 546, and the Farnsworth Act enacted by the same General Assembly under date of April 22, 1931, 114 O. L., 518. By the DeArmond Act provision is made for the abandonment for canal and hydraulic purposes of that portion of the Miami and Erie Canal from a point where said canal joins the Maumee River in Providence Township, Lucas County, Ohio, to a point five hundred feet north of the state dam near the corporation line of the City of Middletown, Ohio, and for the use of such portions of said abandoned canal lands for highway purposes as may be designated and reserved for such purposes by the Director of Highways after he has made the survey of these canal lands which this act authorizes and directs him to make. By this act, it is further provided that if the Division of Conservation of the State of Ohio or any city, village or other municipal corporation or any county, township, municipal park board or other political subdivision or taxing district of the State, desires to lease for public park or recreational purposes any portion of abandoned canal lands not desired for highway purposes, applications for such leases might be made within two years of the effective date of said act.

The DeArmond Act became effective August 6, 1931. And inasmuch as the above described parcels of Miami and Erie Canal lands covered by this lease, were neither designated and reserved for highway purposes nor included in any application or applications for the lease of the same for public park purposes within two years from the date said act became effective, this property may be leased for other more general purposes under the provisions of section 19 of said act, which reads as follows:

“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 therefor shall be six per cent of the appraised value thereof, as determined by said superintendent of public works."

Authority for each and all of the essential provisions of this lease may be found in the DeArmond Act, above referred to, and in the more general provisions of sections 13965, et seq., General Code, except as to the condition designated No. 4 on the second page of the lease, which condition is as follows:

"It is hereby mutually agreed and understood between the parties of the first and second parts hereto, that at the end of each 15-year period, during the continuance of this lease, up to the 90th year, the canal property herein leased, shall be reappraised by proper state authority at the end of each of said respective 15-year periods, and in like manner, said canal property shall be reappraised at the beginning of the 90th year of this lease, which reappraisal shall continue in force to the end of the 99th year, and the annual rental for each of said periods shall be six per cent of the respective appraisements."

If any express statutory authority were necessary to authorize the incorporation of a provision of this kind in a long-term lease such as that here under consideration, such authority is found in the Farnsworth Act which became effective on August 6, 1931, and which is in pari materia with the DeArmond Act under the provisions of which this lease is executed. Touching the provision in this lease for reappraisal of the property for rental purposes at the end of each fifteen-year period of the term of the lease, the Farnsworth Act here referred to provides:

"Leases granted for a longer period than fifteen years shall contain a clause providing for a reappraisal of the canal lands described in such leases, by proper state authority, at the end of each 15-year period, embraced in such leases and the annual rental therefor shall be six per cent of the appraised value thereof for each period."

Upon examination of this lease, I find that the same has been properly executed by the State of Ohio, acting through you as Superintendent of Public Works and as Director of Public Works, party of the first part, and by the City of Defiance, acting by the hands of its Mayor and Safety Service Director pursuant to the authority of a resolution of the Council of said City passed under date of January 17, 1939. I further find, upon examination of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with

the statutory provisions above noted and with other 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 thereon and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*