

5733.

APPROVAL—TRANSCRIPT OF PROCEEDINGS RELATING TO  
SALE TO THE CLIFTON DEVELOPMENT COMPANY OF  
CINCINNATI, OHIO, M&E CANAL LANDS IN MILLCREEK  
TOWNSHIP, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, June 20, 1936.

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

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a transcript of your proceedings relating to the sale to The Clifton Development Company of Cincinnati, Ohio, of a parcel of surplus Miami and Erie Canal lands which, together with other parcels of such canal lands, was relinquished to the state of Ohio by the city of Cincinnati by deed under date of October 28, 1928, pursuant to the authority of Amended Senate Bill No. 123 enacted by the 87th General Assembly, 112 O. L., 210.

The parcel of land here in question is Parcel No. 149A of the subdivision of surplus Miami and Erie Canal lands in the city of Cincinnati in Sections 27 and 21 of Millcreek Township, Hamilton County, Ohio, as surveyed and platted by the Board of Rapid Transit Commissioners of the city of Cincinnati, and the same is more particularly described by metes and bounds as follows:

Beginning in the southerly line of Central Parkway at a point opposite the extension of the west line of Bless Avenue; said point being also the intersection of the southerly state line of the Miami and Erie Canal land, said west line of Bless Avenue having a magnetic bearing south 0 degrees 59' west; thence eastwardly and northeasterly along the said southerly and easterly state line the following courses and distances: south 80 degrees 27' 14" east 23 feet, north 56 degrees 24' 15" east 55 feet, north 47 degrees 16' east 55 feet, north 22 degrees 32' east 224.55 feet to the south line of the property of Julia Fanning, said south line being the south line of Lot No. 14, of T. Kirby's Subdivision; thence northwestwardly 25 feet along the extension of the said south line of said Lot No. 14 to the easterly line of Central Parkway; thence southwestwardly 474 feet, more or less, along the easterly line of Central Parkway to the place of beginning and being part of Miami and Erie Canal State land and containing approximately 8630 square feet.

As above noted, the parcel of land herein described is a part of Miami and Erie Canal lands in the city of Cincinnati which were not required or used for subway or boulevard improvements constructed by said city under the supervision of the Rapid Transit Commissioners of the city, and which were thereafter conveyed by said city to the state of Ohio by deed pursuant to the act of the legislature above referred to, which was enacted May 2, 1927, and which went into effect on the 3rd day of August in that year. This act provided for the appraisal by the Superintendent of Public Works of the several tracts or parcels of these surplus canal lands subject to the approval of the Board of Rapid Transit Commissioners of the city of Cincinnati with respect to the valuations placed by him upon these tracts of land. This act further provided, among other things, for the sale of such marginal parcels of canal lands by the Superintendent of Public Works at the approved valuations placed by him upon the same and that upon applications therefor by the owners of property abutting upon these several parcels of canal lands within a period of three months from the time the state acquired title to the property by deed or deeds from the city of Cincinnati, such abutting property owners had a prior right with respect to the purchase of such marginal parcel or parcels of canal lands. In this connection, it is further provided in and by this act that if the owner or owners of such abutting property decline or neglect to purchase or lease such marginal tract of canal lands within three months after the date of the deed or deeds by which the state acquired title to such canal lands, the Superintendent of Public Works might sell such marginal tracts or parcels for the best price obtainable therefor, or lease the same by perpetual leasehold, subject to the approval of the Governor and the Attorney General of Ohio.

Section 11 of this act provides as follows:

“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 shall be made on the basis of such re-appraisalment.”

The parcel of marginal Miami and Erie Canal lands here in question is one of the tracts of such lands which were not sold or leased by the Superintendent of Public Works within the three-year period referred to in Section 11 of the act. From the transcript of your proceedings for the sale of the above described tract of marginal or surplus Miami and Erie Canal lands, it appears that subject to the approval of the Governor and the Attorney General you have sold this property to The Clifton Development Company for a consideration of \$1,726.00 to be paid to the state of

Ohio by said company and upon the contract and agreement of said company as an additional consideration for the sale of this property to it, that said company will pay to the city of Cincinnati assessments that have been levied upon this property for the improvement of Central Parkway Boulevard, amounting to the sum of \$345.00.

The first question suggested in the consideration of your proceedings relating to the sale of this parcel of Miami and Erie Canal lands is whether you are authorized to sell this property to The Clifton Development Company at private sale for the price and consideration above stated, in view of the fact that Section 13971, General Code, requires the sale of canal lands at a price in excess of \$500.00 to be made by offering the property at public vendue. In this connection, it is noted, however, that Section 13971, General Code, and the provisions thereof above referred to, are a part of the original acts providing for the sale of canal lands generally that are not needed for canal purposes and which cannot be leased so as to yield six per cent upon the appraised valuation thereof. The sale of the property here in question is one made by you under the provisions of Amended Senate Bill No. 123, 112 O. L., 210, above referred to, which make special provision, among other things, for the sale of only a specific part of the canal lands of the state, the situation of which is peculiar by reason of the fact that a part only of the Miami and Erie Canal lands which were turned over to the city of Cincinnati for the construction of a subway and parkway were used for these purposes, and these marginal strips, the sale of which is provided for in this act, are portions of such canal lands which were left after said improvements were made. In this connection, I am advised that the Clifton Development Company is now the owner of property abutting upon the marginal tract of canal lands above described. In view of this fact and the further fact that this act specifically provides that these marginal tracts may be sold for the best price obtainable therefor, I am of the view that the special provisions of this act control as against the more general provisions of Section 13971, above referred to, and that no exception can be taken to your action in selling this property to the purchaser above named and for the price named at private sale.

It further appears from your proceedings relating to the sale of this property that the appraisal of the same at the sum of \$1,726.00 was made by you without any approval thereof by the Board of Rapid Transit Commissioners of Cincinnati or of any other officer or authority of such city. For the reasons set out in Opinion No. 5341, directed to you under date of April 9, 1936, which related to the question of the appraisal of these marginal tracts of Miami and Erie Canal lands in the city of Cincinnati, I am of the opinion that no approval of your appraisal of this property by any officer or board of the city of Cincinnati is required.

I am accordingly approving the transcript of your proceedings relating to the purchase of the above described property, as is evidenced by my approval endorsed upon the transcript of such proceedings submitted to me and upon the duplicate copy thereof.

With the transcript, above referred to and approved, you have submitted for my examination and approval a deed executed by the state of Ohio by the hand of the Governor conveying the above described property to The Clifton Development Company. Upon examination of this deed, which has been signed by the Governor and countersigned by the Secretary of State, I find that the same has been properly executed and that the form of this deed is such that it is legally sufficient to convey this property to The Clifton Development Company by fee simple title upon the consideration in money above stated and upon the agreement of said company as the named grantee in the deed to pay any and all assessments levied by the city of Cincinnati against this property for the construction of Central Parkway. This deed is likewise approved by me, as is evidenced by my approval endorsed thereon.

I am herewith returning to you the transcript of your proceeding relating to this sale and the deed conveying the property to The Clifton Development Company. This deed should be lodged with the Auditor of State for record as required by the provisions of Section 8523, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

---

5734.

DISAPPROVAL—BOND FOR THE FAITHFUL PERFORMANCE  
OF HIS DUTIES AS RESIDENT DIVISION DEPUTY DI-  
RECTOR—HARRY SHARP.

COLUMBUS, OHIO, June 20, 1936.

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

DEAR SIR: You have submitted a bond, in the penal sum of \$5,000, with surety as indicated, to cover the faithful performance of the duties of the official as hereinafter listed:

Harry Sharp, Resident Division Deputy Inspector in Division  
11—Century Indemnity Company of Hartford Connecticut.