

convey to the president and trustees of the Miami University, as a corporation, all the right, title and interest in perpetuity owned and held by said grantors to the property in question, free and clear of all encumbrances whatsoever, except all taxes and assessments due and payable December 20, 1928, and thereafter.

Encumbrance estimate No. 2697, submitted with the above files, has been properly executed and shows there are sufficient balances in a proper appropriation account to pay the purchase price of said property.

I am herewith returning to you said corrected abstract of title, warranty deed and encumbrance estimate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

412.

APPROVAL, BONDS OF EAST CANTON SPECIAL SCHOOL DISTRICT,
STARK COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, May 17, 1929.

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

413.

LEASE—CANAL PROPERTY—SUPERINTENDENT OF PUBLIC WORKS
MAY NOT TERMINATE—SPECIFIC CASE.

SYLLABUS:

Where, pursuant to the terms of a lease of canal property for hydraulic purposes, executed by the Superintendent of Public Works, the lessee therein notifies the Superintendent of Public Works of its intention to terminate said lease effective November 1, 1929, the Superintendent of Public Works has no authority, prior to the termination of said lease at the time fixed by said notice, to release said lessee from the obligation and duty imposed upon it by said lease, to maintain said canal property and to keep the same in repair.

COLUMBUS, OHIO, May 18, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which was inclosed a copy of a water lease executed by you as Superintendent of Public Works to The Southern Ohio Public Service Company, and in which communication you request my opinion as to your authority to release said company from some of the obligations imposed upon it by the terms of said lease.

From your communication and an examination of the lease here in question, it appears that on May 3, 1927, you executed to The Southern Ohio Public Service Company a lease by the provisions of which, and in consideration of the annual rentals

therein provided for, there was granted to said company the right to take water, up to a stipulated maximum, from the level of the Ohio canal below the dredge dock at Buckeye Lake for steam cooling and manufacturing purposes for a term of twenty-five years from the first day of November, 1926. By the provisions of said lease, said lessee was given the authority and permission to enter upon, occupy and use for hydraulic purposes that portion of the abandoned Ohio canal, commencing at the state dock on the north shore of the new reservoir of Buckeye Lake and extending thence northerly over and along said Ohio canal property for a distance of 5.3 miles to what is known as Beavers' Run culvert under the canal at Station 435 plus 60 of Row's survey of the Ohio canal. By said lease in the sixth paragraph thereof, said lessee agreed to take over the maintenance of the 5.3 miles of abandoned Ohio canal property above referred to, including the replacement of aqueducts, flumes, conduits and other structures necessary for the proper control and operation of said canal for said hydraulic purposes, and likewise strengthen and maintain the canal banks so as to render them safe for restraining the water flowing in the canal within its proper channel.

Said lease in Section 13 thereof, authorizes said lessee to terminate said lease after six months' notice to the Superintendent of Public Works, given at any of the rental paying dates provided for in said lease, which are May 1 and November 1 of each year during the term of said lease. It appears that pursuant to this provision of the lease said lessee, prior to May 1, 1929, notified you of its intention to terminate said lease effective November 1, 1929.

In your communication you state that the lessee company has abandoned its plant at Hebron, Ohio, and does not expect to operate it again and that said company, therefore, has no use for the water contracted for by said lease. You state that said company is now rebuilding a flume in said canal which was taken out by a freshet, and which flume will be of no benefit to said company but will benefit the village of Hebron as a matter of fire protection.

The specific question presented in your inquiry is whether you are authorized to release said company from its obligation to maintain and keep in repair the canal lands covered by said lease between this time and November 1, 1929, when said lease terminates, pursuant to the notice therefor, given by the company under the provisions of the contract above referred to, it appearing that said company has paid or intends immediately to pay the semi-annual rental due under said lease from May 1 to November 1, 1929.

Touching the question here presented, it is quite clear that in your capacity as Superintendent of Public Works, you have no power with respect to the canals of the state and the water thereof, except such as is expressly conferred upon you by statute, or such as is necessarily implied. 37 O. S. 157, 174.

This department in opinions rendered from time to time during former administrations of the office, has held that the Superintendent of Public Works has no authority to cancel a lease executed by him, or release the lessees therein from the obligations of said lease, otherwise than for causes provided for by law, or in accordance with lawful provisions in the lease itself. In accordance with this rule and principle of law, I am inclined to the view that you have no authority to release the said company from any of the obligations imposed upon it by the terms of said lease prior to its termination on November 1, 1929, and by way of specific answer to your question, I am of the opinion that the same should be answered in the negative.

Respectfully,

GILBERT BETTMAN,
Attorney General.