

to deliver to the lessee the use of the surplus water passing Locks Nos. 46 and 47 of the Miami and Erie Canal in the city of Toledo, Ohio, which it covenanted under said lease to furnish to the lessee at a continuous flow of not less than 4800 cubic feet per minute; and that said lessee's loss of use of said water power has materially reduced the rental value of said premises."

In this connection, it is to be noted that the lease here in question, which was executed to the Toledo Grain and Milling Company under date of December 30, 1912, was one covering not only the parcels of land covered in the lease but likewise the use of water in the canal for hydraulic purposes; and that since the abandonment of said canal at this point for canal and hydraulic purposes, the only benefits that have accrued to the lessee under this lease have been the use and occupation of the parcel of Miami and Erie Canal lands described in the lease.

In this situation, the adjustment and reduction made by the Superintendent of Public Works in the amounts of the delinquent and current rentals under this lease would seem to be justified upon legal grounds; and assuming, as I must, that the Superintendent of Public Works made the investigation with respect to this matter contemplated by the act of the legislature above referred to, I am approving the finding made by him with respect to the reductions in the delinquent and current rentals above noted, as is evidenced by my approval endorsed upon the resolution which is attached to the finding made by the Superintendent of Public Works, and upon the copies thereof, all of which together with the finding and application, are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5499.

APPROVAL—LEASE TO OHIO CANAL LAND IN TUSCARAWAS COUNTY, OHIO, TO OHIO POWER COMPANY OF NEWARK, OHIO.

COLUMBUS, OHIO, May 11, 1936.

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

DEAR SIR: You have submitted for my examination and approval a certain canal land lease in triplicate executed by your immediate predecessor in office as Superintendent of Public Works to the Ohio Power Company of Newark, Ohio. By this lease, which is one for a term of

fifteen years and which provides for an annual rental of \$100.00 payable in semi-annual installments of \$50.00 each, there is leased and demised to the lessee above named the right to use and occupy a portion of the Ohio Canal in Tuscarawas County, Ohio, for high tension pole line right of way purposes. The portion of the abandoned Ohio Canal lands covered by this lease is more particularly described in the lease as follows:

Beginning at the point marked by the Northern Ohio Traction and Light Company's pole situated approximately forty (40') feet west of the Wooster Street Bridge in Dover, Ohio, and on the tow-path of the Ohio Canal, said tow-path being on the north bank of the Tuscarawas River; and extending a distance of 260.8 feet north 55° 35' east; thence a distance of 320.6 feet north 65° 50' east; then a distance of 851.8 feet north 68° 4' east; thence a distance of 407.6 feet north 72° 9' east; thence a distance of 315.1 feet north 82° 31' east; thence a distance of 1107.8 feet south 86° 7' east; and ending at a point a distance of 567.3 feet south 77° 40' east.

This lease has been properly executed by the Superintendent of Public Works, then in office, acting on behalf of the State of Ohio, and by the Ohio Power Company, the lessee therein named, acting by the hands of its Vice-President and Secretary who were duly authorized to execute this lease on behalf of the company by resolution of the Board of Directors of the company adopted under date of February 6, 1935.

Assuming that no application or applications for the lease of the lands covered by this lease instrument were made by any person or corporation having a prior right to the lease of these lands under the provisions of Section 14203-97, General Code, I find upon examination of these lease instruments that the provisions thereof and the conditions and restrictions therein contained are in conformity with the act of the 89th General Assembly providing for the abandonment of these canal lands and for the lease of the same, 114 O. L., 541, and with other statutory 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 upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.