

48.

APPROVAL—CANAL LAND LEASE, STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, WITH THE STANDARD OIL COMPANY OF CLEVELAND, DESIGNATED MIAMI AND ERIE CANAL PROPERTY, CINCINNATI, HAMILTON COUNTY, OHIO, RIGHT TO OCCUPY AND USE FOR PIPE LINE PURPOSES.

COLUMBUS, OHIO, January 27, 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 you as Superintendent of Public Works and as Director of said department to The Standard Oil Company of Cleveland, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$12.00, there is leased and demised to the lessee above named the right to occupy and use for pipe line purposes that portion of the abandoned Miami and Erie Canal located in the city of Cincinnati, Hamilton County, Ohio, which is described as follows:

Beginning at a point in the easterly berme bank of said canal property, same being in the southerly line of Laidlaw Avenue, in said city, said point being at or near Station 12435+00, of G. H. Nichols Survey of said canal property, and extending thence southwesterly along said berme bank four hundred ten (410') feet, more or less, to a point opposite to Station 12439+10, of said survey.

The above described parcel of land is apparently in that section of the canal extending from a point five hundred feet north of the state dam near the corporation line of the city of Middletown to the present terminus of said canal at St. Bernard, Hamilton County, Ohio, which section was abandoned for canal and hydraulic purposes by an act passed by the 87th General Assembly under date of April 21, 1927, 112 O. L., 388, which act was carried into the General Code as sections 14153-1 to 14153-10, inclusive. By this act, the jurisdiction and control of this section of Miami and Erie Canal lands was transferred to the Director of Highways, in which officer such jurisdiction and control remains as to any particular parcel or parcels of canal lands in this section until the same is released by the Director of Highways and transferred by him back to the jurisdiction and control of the Superintendent of Public Works under the provisions of sections 14153-5 to 14153-10, General

Code, as said sections were amended in the Act of May 6, 1935, 116 O. L., 157-160.

Attached to this lease and made a part thereof is a copy of an entry made by the Director of Highways under date of June 17, 1938, and entered on the journal of his office, in which it is stated that the above described parcel of canal lands and other canal lands in said section and included in this entry, are not needed in any scheme of highway development contemplated by the Department of Highways under the authority of section 14153-3, General Code, and its related sections, and in which entry the canal lands therein described, including that covered by this lease, are released to the Superintendent of Public Works as Director of said department, for his disposition as provided by law.

In this situation, I am of the opinion that you are authorized to lease the above described parcel of Miami and Erie Canal land under the authority conferred upon you by section 14153-8, General Code, as amended by the Act of May 6, 1935, above referred to. This section of the General Code, in so far as the same is pertinent to the question of your authority to execute this particular lease, provides as follows:

“All other lands which may be shown on said plat adjacent to said highway and which will not be used for highway purposes may be leased under the direction of the superintendent of public works in the following manner:

The said superintendent of public works shall appraise said lands, not to be used for said highways, just prior to the granting of a lease therefor, at their true value in money and the annual rental thereon shall be six per cent (6%) of such appraised value.

After said lands are so appraised after application therefor, the lands not needed or required within said highway may be leased to any reasonable applicant, for a period of fifteen (15) years and multiples thereof up to ninety (90) years, or for a term of ninety-nine (99) years, renewable forever, upon a rental equal to six per cent (6%) per annum upon the value of the appraisement so made, and at the end of each fifteen (15) year period, said lands shall be reappraised and likewise leased to the owner or owners of such leaseholds, or other applicants therefor.”

Upon examination of this lease, I find that the same has been properly executed by you as Superintendent of Public Works, acting for and on behalf of the State of Ohio, and by The Standard Oil Company, the lessee therein named, acting by the hand of one of its Vice Presidents pursuant to the authority conferred upon him by a resolution of the

Board of Directors of said company. I further find that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the provisions of the section of the General Code under the authority of which the same is executed and with those of 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,

THOMAS J. HERBERT,  
*Attorney General.*