

6535.

APPROVAL—RESERVOIR LAND LEASE TO LAND IN ANDOVER TOWNSHIP, ASHTABULA COUNTY, OHIO—PERCY D. HYATT POST NO. 226, AMERICAN LEGION OF ANDOVER.

COLUMBUS, OHIO, December 18, 1936.

HON. L. WOODDELL, *Commissioner, Conservation Division, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a reservoir land lease in triplicate executed by the state of Ohio, acting through you as the authorized agent of the state and of the Conservation Council, to The Percy D. Hyatt Post No. 226 American Legion of Andover, Ohio. By this lease instrument, which is one for a term of fifteen years, there is leased and demised to the lessee above named the right to occupy and use for club house and private docklanding purposes a parcel of state reservoir lands forming a part of the Pymatuning Reservoir property in Andover Township, Ashtabula County, Ohio, and which is more particularly described as follows:

Beginning at the northerly right of way line of State Highway No. 85, that is 920 feet east of the southwest corner of Lot No. 45; thence northerly, easterly and southerly along the meanderings of Pyamatuning Reservoir, to the said northerly right of way line of said highway; thence westerly along the said northerly right of way line, 600 feet, more or less, containing three acres, more or less, and being part of Lot No. 45, Town 9 North, Range 1 West; Andover Township, Ashtabula County, Ohio.

The property here in question was obtained by the state of Ohio from the Pymatuning Land Company some years ago; and upon the acceptance of the property the same passed into the control of the Conservation Council of the Division of Conservation, which body is charged with the duties conferred upon it by sections 472 and 1438-1, General Code, with respect to property of this kind. The authority of the Conservation Council as to the lease of park lands of this kind is that conferred upon this body by sections 472 and 472-1, General Code.

This lease has been properly executed by and on behalf of the state of Ohio, acting through you as Conservation Commissioner pursuant to the authority of a resolution of the Conservation Council, and by The

Percy D. Hyatt Post No. 226 American Legion, acting by the hand of its Post Commander pursuant to a resolution of said Post.

The only question of serious import with respect to the validity of this lease arises from the provision in the lease as to the consideration to be paid by the lessee for the same. This consideration as stated in the lease is "\$1.00 per year and other considerations, the other considerations being the assistance in law enforcement and propagation of wildlife." Although there is nothing in the provisions of section 472 or 472-1, General Code, which fix the annual rental of a lease executed under the authority of these sections at six percent of the appraised value of the property leased as is the case with respect to leases executed by the Conservation Commissioner as such under the authority of section 471, General Code, it is nevertheless true that the Conservation Council may not give away the property of the state either absolutely or by long-term lease. As above indicated, a part of the consideration for this lease appears to be the active aid and assistance which the lessee is expected to give to the Conservation Council in the matter of protecting wild life in and upon Pymatuning Lake and Park. I am unable to say as a matter of law how much or how little aid or assistance may be expected from this club or its members in the laudable work of protecting wild life in and upon this reservoir which might otherwise be destroyed by poachers and by others hunting and taking game illegally. In this situation, I am unable to say that there is not an adequate consideration for the lease. However, I take the liberty of suggesting that before this executed lease is delivered to the lessee, very definite and satisfactory arrangements should be made by and between yourself as the agent of the Conservation Council and the lessee and its members as to the character of the duties which this club and members are to perform in this connection. With this understanding, I am approving this lease as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies of the same, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*