

reference to the character of the obstruction. Under Section 7212 G. C., it is the duty of the owners or occupants of land to keep in repair all approaches from the public roads. If a property owner fails to keep in repair an approach from a public road, as required by Section 7212 G. C., and by reason of his failure to keep such approach in repair, the same becomes an obstruction to a side ditch along the public highway, it is my opinion that such owner is guilty of a violation of the provisions of Section 13421-7 G. C., and that he may be prosecuted for such violation. * * *

It is my opinion that the same would apply in like manner to a bridge or culvert over an existing county ditch as a part of the approach or driveway of an abutting property owner, which county ditch has been located on the right of way of a public road.

Coming now to a specific answer to your inquiry, in my opinion it is the duty of the abutting owners and occupants of land under the direction of the county engineer to construct and keep in repair bridges and culverts for private approaches or driveways from the public roads over county ditches which have been located upon the right of way of said public roads, unless in the construction or improvement, maintenance and repair of such public roads or county ditches a bridge or culvert for an existing approach or driveway of an abutting property owner is destroyed, in which event the authorities constructing, improving, maintaining or repairing such public road or ditch, either shall compensate such abutting property owner of said lands for the destruction of such bridge or culvert for the approach or driveway, or shall authorize the county engineer to reconstruct the same at public expense.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

602.

APPROVAL—LEASE OF CERTAIN CANAL LANDS TO ONE
BURLEY TINNEMAN OF ST. MARYS, OHIO.

COLUMBUS, OHIO, May 15, 1937.

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 you as Superintendent of Public Works and as Director of said department to one Burley Tinnerman of St. Marys, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for the payment of an annual rental of \$6.00, there is leased and demised to said lessee the right to occupy and use for agricultural purposes that portion of the State Lot which is adjacent to and east of Lock No. 14, numbering north from the Loramie Summit of the abandoned Miami and Erie Canal in Noble Township, Auglaize County, Ohio, which is described as follows:

Commencing at the intersection of the southerly line of said State Lot with the easterly top water line of the said abandoned canal which is at or near Station 5703, of D. Blythe's survey of said canal; thence in a northeasterly direction along the said easterly top water line and the easterly line of the abandoned waterway channel to the southerly line of a run which is located northeasterly from the said Lock No. 14; thence in a westerly direction along the southerly line of said run to the westerly line of a public highway; thence in a southerly direction along the westerly line of said highway to the east line of said State Lot; thence in a southeasterly direction along the east line of said State Lot to the southeast corner of said State Lot; thence in a northwesterly direction along the southerly line of said State Lot to the place of beginning, and containing two (2) acres, more or less.

Upon examination of this lease, I do not find in the body of the same any reference to the statutory provisions under the authority of which this lease is executed. The last act of the legislature of this State relating to the lease of abandoned Miami and Erie Canal lands upon the section of said canal referred to in this lease, is Amended Substitute Senate Bill No. 194, known as the DeArmond Act, enacted by the 89th General Assembly under date of April 29, 1931, 114 O. L., 546. This act provides for the abandonment for canal and hydraulic purposes of that portion of the Miami and Erie Canal lying between the point where said canal joins the Maumee River in Providence Township, Lucas County, Ohio, and a point five hundred feet north of the State Dam near the north corporation line of the city of Middletown, Butler County, Ohio. This act by its terms provides for the abandonment

of said canal between the points named "including the full width of the bed and banks thereof." And said act makes provision for the lease of such parts of said canal lands so abandoned as are not designated and set apart by the Director of Highways for highway purposes. However, there is nothing in this act which in terms provides for the abandonment and lease of state lots as such.

State lots, as I am advised, are parcels of land contiguous to the canal lands of the State which were acquired by the State from time to time during the early history of the state canals which the State leased for use by the several lessees thereof in connection with leases for hydraulic and other purposes of surplus waters in the canals at points adjacent to such state lots.

Standing alone, there may be some question, therefore, as to whether the act of the legislature above referred to authorizes you to execute leases of state lots along the line over Miami and Erie Canal lands abandoned by the act. As to this, it is noted, however, that by a former act providing for the abandonment of the Miami and Erie Canal at the point here in question and for the lease by the Superintendent of Public Works of canal lands so abandoned, state lots were specifically included within the purview of the act. The act here referred to is House Bill No. 162 enacted by the 86th General Assembly under date of April 11, 1925, 111 O. L., 208. This act in and by the first paragraph of Section 1 thereof provided "that the portion of the Miami and Erie Canal, including all canal feeders, basins, wide waters and state lots heretofore used in connection with said canal property, lying between the Maumee River at Defiance, Defiance County, Ohio, and a point 500 feet north of the Middletown dam near the north corporation line of the city of Middletown, Butler County, Ohio, be and the same is hereby abandoned for canal purposes." In the second paragraph of the first section of this act, it was provided that "Any portion of the said canal lands as described in Section 1" that might be required in the construction of any ship or barge canal under the authority of legislation passed or to be passed by the Congress of the United States or by the State of Ohio or both was reserved from the operation of the act. This act by separate sections thereof provided for the lease by the Superintendent of Public Works of "abandoned canal lands covered by this act of abandonment" lying outside of municipalities and not included in an application for lease by an adjacent municipality, or other legal subdivision of the State, and for the lease of "any portion of the abandoned canal lands described in Section 1 of this act" within

a municipality not included in an application by such municipality for the lease of the same.

It seems quite clear, therefore, that state lots as such were and are within the intendment of this act of the 86th General Assembly as to the abandonment thereof for any use in connection with said canal and as to the lease of the same in the same manner as the lease of canal lands as such was therein provided for. In this connection, it is noted as a rule of statutory construction applicable in this case that "that which is plainly implied in the language of a statute is as much a part of it as that which is expressed." *Doyle vs. Doyle*, 50 O. S. 330; *Larkins vs. Routson*, 115 O. S., 639, 651.

Amended Substitute Senate Bill No. 194, the later act above referred to, in and by the last section thereof provides "that all acts, or parts of acts, in conflict with this act be, and the same are hereby repealed." As above noted, however, there is nothing in said later act which in terms relates to state lots as such and in this situation it cannot be said that the terms of the earlier act which effectually provide for the abandonment and lease of state lots are repealed by the later act. Conformable to well known rules of statutory construction the later act must be read in connection with such of the provisions of the earlier act as are not repealed expressly or by implication; and inasmuch as under both acts the Superintendent of Public Works is authorized to execute leases for fifteen years or multiples thereof and for an annual rental of six per centum of the appraised value of the land leased, I am of the opinion that you had ample authority to execute the lease here in question.

I find upon examination of this lease that the same has been properly executed by you as Superintendent of Public Works, acting for and in the name of the State of Ohio, and by Burley Tinnerman, the lessee therein named. And inasmuch as I find that the terms and provisions of this lease and the conditions and restrictions therein contained are in conformity with statutory provisions relating to leases of this kind, I am 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,

HERBERT S. DUFFY,

Attorney General.