

struction of a girls' dormitory (Mack Hall) on the Ohio State University campus, and calls for an expenditure of one hundred thirty-nine thousand seven hundred (\$139,700.00) dollars.

Accompanying said contract is a bond to insure faithful performance, executed by The Aetna Casualty and Surety Co., of Hartford, Conn.

I have before me the certificate of the Director of Finance that there is an unencumbered balance legally appropriated sufficient to cover the obligations of this contract.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

3009.

CANAL LANDS—RIGHT TO NAVIGATE ABANDONED SECTION OF SAID CANALS—NO AUTHORITY IN DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS TO ISSUE PERMITS ALLOWING NAVIGATION OF ABANDONED SECTIONS—NO PERMITS NECESSARY OF SECTIONS NOT ABANDONED—WHAT STATUTES CONTROL—HOW FREIGHT RATES AND TOLLS FIXED ON NAVIGABLE CANALS.

1. *By reason of the provision of the act of the General Assembly of January 22, 1920, 108 O. L. (Pt. 2), p. 1138, abandoning a certain section of the Miami and Erie canal for canal and hydraulic purposes, no one is now entitled as a matter of right to navigate the abandoned section, nor has the Department of Highways and Public Works the authority to issue permits allowing the navigation of the abandoned section.*

2. *No permit from the Department of Highways and Public Works is necessary for the navigation of sections of canals not abandoned; but the matter of such navigation is provided for by sections 13997 and 14137 G. C.*

3. *Section 416 G. C. authorizes the fixing by the Department of Highways and Public Works of rates and tolls for freights carried on navigable canals.*

COLUMBUS, OHIO, April 21, 1922.

*Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.*

GENTLEMEN:—You have requested the opinion of this department upon the following:

“The Grand Rapids Supply Company has requested this department to grant them a permit to resume navigation on the Miami and Erie canal for the purpose of transporting freight from the city of Defiance to a point at Lock No. 52 in the city of Toledo. This permit would extend over about nine (9) miles of canal lands from the village of Maumee to said Lock No. 52 in the city of Toledo, which is included in the recent abandonment for both canal and hydraulic purposes in an act of the legislature known as House Bill No. 560.

First, has this department authority to grant The Grand Rapids Supply Company a permit to resume navigation over the 9-mile distance included in House Bill No. 560?

Second, has this department authority to grant The Grand Rapids Supply Company a permit to resume navigation over that portion of canal from Maumee to Defiance which was not included in House Bill No. 560?

Third, has this department authority to re-establish the rates and tolls to be charged for operation of said boats in transporting freight between the terminal points of Defiance and Maumee or between Lock No. 52 in Toledo and the village of Maumee, or would the original rates and tolls formerly used by the department when the canal was used for navigation purposes still be in existence?"

The act which you describe as House Bill No. 560 was passed January 22, 1920, as appearing 108 O. L., Pt. 2, page 1138. Its title is:

"An act to abandon a portion of the Miami and Erie canal in Lucas county, Ohio, and to provide for the sale or lease of the same to the city of Toledo, Ohio."

Section 1 of the act reads:

"That the portion of the Miami and Erie canal in Lucas county, Ohio, that is described as follows be and the same is abandoned for both canal and hydraulic purposes, subject, however, to the rights hereinafter in sections 6 and 7 provided for."

(Here follows a description of the section abandoned.)

Sections 6 and 7 contain provisions to the effect that in case a deed or lease is made to the city of Toledo, the same shall be "subject to the rights of owners of existing leases of either lands or water or both," etc.

Other sections of the act provide for an appraisalment; an acceptance by the city within three years of the option of purchase or lease; amount of rental, etc.

Since the act on its face abandons for both canal and hydraulic purposes the section of canal which the act describes, it follows that your first question is to be answered by the statement that your department is entirely without authority to authorize navigation on the section abandoned, and that no one as a matter of right is entitled to navigate said section. Quite true, the city of Toledo may not as yet have carried out the legislation necessary to a purchase or lease of the abandoned section; but that fact cannot override the plain terms of the act to the point that the canal is abandoned for canal and hydraulic purposes.

Coming to your second question, answer may be briefly given to the effect that no permit is necessary for the resumption of navigation over that portion of the canal which has not been abandoned.

The entire subject of navigating the canals is covered by sections 13997 to 14137 G. C. Those sections have long been in existence, and were perhaps enacted with reference to a state of affairs which no longer exists; that is to say, that from a practical standpoint there has been really no navigation of the canals for many years past. But any person has the right to navigate the canals without special permit, provided that he complies with the provisions of sections 13997 to 14137, as above mentioned. To be sure, he must have a clearance as set out in the sections indicated; and section 14090 allows the issuance of a "permit" instead of a clearance. But the word "permit" as thus used is not in the sense of the grant of a special privilege to navigate the canals;—rather its import goes to mere adminis-

trative convenience in the issuing of navigation papers in cases where collectors are inaccessible for the granting of clearances.

Your third question may be answered by the quotation of section 416, which reads as follows:

“The superintendent of public works of Ohio shall regulate the rate of tolls to be collected on the public works of the state, and shall fix all rentals and shall collect or cause to be collected all tolls, rents, fines and all revenues arising from whatsoever source in the public works of Ohio.”

So far as has been found, there are no statutes in existence specifying rates of toll for freights. The original rates and tolls which you speak of in your letter were undoubtedly those fixed by the Board of Public Works as an administrative matter. At one time the statutes provided for toll rates for passengers (Chase's Statutes, Vol. 3, p. 1651), but as already indicated, no similar provisions have been found as to freight rates and tolls. It follows that by virtue of section 416 G. C., your department is authorized to fix rates and tolls.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

3010.

CANAL LANDS—DISAPPROVAL OF LEASE FOR PRIVILEGE OF TAKING ICE, SAND AND GRAVEL FROM SAID LANDS.

*Disapproval of proposed lease for privilege of taking ice, sand and gravel from canal lands.*

COLUMBUS, OHIO, April 21, 1922.

*Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.*

GENTLEMEN:—You have recently submitted to me for examination an instrument entitled “Canal Land Lease” proposing to grant to The Grand Rapids Supply Company:

“The exclusive privilege of cutting ice and taking sand and gravel from the slack water pool of the Maumee river for one and one-half miles above the dam at Grand Rapids in Lucas and Wood counties, Ohio, excepting and reserving therefrom the right of abutting land owners to cut and remove not to exceed ten (10) tons of ice for family use only, and likewise to take sand and gravel in front of their premises, for use on their own grounds.”

The paragraph just quoted from the instrument is followed by others which need not be here quoted, except to say that one of the provisions made is that The Grand Rapids Supply Company is to pay the state seven and one-half cents per ton for all ice cut and stored, and seven and one-half cents per ton for all sand and gravel taken. The instrument contains further provisions to the effect that the term of the grant is for fifteen years.