

4529.

APPROVAL, LEASE TO LAND IN DELAWARE COUNTY FOR GAME REFUGE PURPOSES.

COLUMBUS, OHIO, July 28, 1932.

DEAR SIR:—You have submitted for my examination State Game Refuge Leases Nos. 2156, 2157 and 2158.

Said lease No. 2156 purports to be made by a party by the name of Charles D. Weiser. However, the lease is signed, not by said Charles D. Weiser, but by E. H. Weiser and Allie Weiser. Because of this patent discrepancy this lease is disapproved in its present form.

State Game Refuge Lease No. 2157 made to the State of Ohio by Fred P. Hills of Delaware County, Ohio, for a tract of 360 acres in Troy Township, Delaware County, Ohio, and the State Game Refuge Order designed to operate on such land are approved.

Likewise, State Game Refuge Lease No. 2158 made to the State of Ohio by E. H. and H. H. Weiser of Delaware County, Ohio, for a tract of land situated in Troy Township, Delaware County, Ohio, and the State Game Refuge Order designed to operate on such land are also approved.

Enclosed please find the above mentioned documents.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4530.

TOWNSHIP FUNDS—MAY NOT BE USED FOR CLEANING A DITCH.

SYLLABUS:

Township public funds may not be expended for the payment of the cost of cleaning a ditch such as is described in Section 6603, General Code.

COLUMBUS, OHIO, July 28, 1932.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“A board of township trustees has requested me to ask the opinion of your office upon the following.

“A ditch which originates in an incorporated village within the township passes through the village into the township and from there into a natural water course. Muskingum has not and never did have a system of township and county ditches and for that reason has no ditch supervisor nor have the county commissioners ever appointed the county surveyor to look after any of them, nor does this county have any general ditch improvement fund. The village cleaned out the ditch within the corporation limits and has requested the township trustees to clean the

ditch from the limits to the place where it enters into a stream. The trustees advise me that about two years ago they were instructed that no public township funds could be expended in cleaning out the ditch.

"I have made a study of the sections of law pertaining to township ditches, the cleaning and repairing of drains and kindred sections. From these I gather that the only method by which the trustees may act is when a ditch is located wholly within the township, and then only after a petition has been presented to them, and that the same is done through a ditch supervisor and the cost of the same taxed against the properties which would benefit thereby and collected as other taxes and assessments.

"The trustees would like to know whether by their own action they may clean out and deepen the ditch in question and hire the same to be done and pay the the same out of their general fund, or any other fund, such as road or bridge fund. The ditch in question involves no road except that at one place it passes under a public highway where there has been erected, a culvert and abutments. Can the improvement be made without the filing of a petition and without the cost being assessed against properties which would benefit. The ditch is of general benefit to the village and township residents. By reason of its present condition the flow of water is sluggish and causes the same to back into the channel in the village. The ditch carries away some of the village drainage. Under these circumstances, can the township trustees expend public funds to eliminate the condition now existing."

Pertinent sections relative to township ditches are Sections 6603 and 6608, inclusive, of the General Code.

Section 6603, General Code, reads in part as follows:

"A petition for the improvement of a ditch or drain which is located wholly within a township, which does not pass into or through a municipality, which has an outlet within the township in a public watercourse, which does not benefit or damage land outside of the township, and which has not heretofore been located as a county ditch, may be filed with the clerk of such township instead of with the auditor of the county as provided in chapter one (G. C. §§6442 to 6508) of this title. * * *"

The general rule is that statutes providing for the establishment and construction of drainage improvements are to be strictly construed.

Pleasant Hill vs. Miami County, 71 O. S. 133;

Elder vs. Smith, 103 O. S. 369.

It is apparent from a reading of the above quotation from Section 6603, General Code, that the jurisdiction for the establishment of township ditches or drains is expressly limited to a ditch "which does not pass into or through a municipality." 1927 O. A. G. 595.

As indicated in your communication, the sections relative to township ditches provide that in the event it is desired to clean a ditch falling within the definition found in Section 6603, General Code, above quoted, the cost of said work shall first be apportioned

"according to benefits to each owner of land for construction. Notice shall be given by the clerk to each owner of land to construct that part of the ditch so apportioned to him within a time to be fixed by the trustees

in their final order determining the apportionment, levying the assessments, and ordering the construction of the improvement.”

(Section 6604, General Code.)

It is apparent therefrom that if a ditch is cleaned under the authority of Section 6603, et seq., General Code, in the event the property owner does not construct that portion of the ditch so apportioned to him, the cost of the same shall be assessed against the property benefited, and consequently such cost could not be paid from the public funds of the township.

Since this is true, the question of whether or not the ditch mentioned in your inquiry falls within the provisions of Section 6603, General Code, need not be discussed.

Under the conditions outlined in your communication, I do not believe that the cleaning of this ditch would be a proper charge against the general fund or any other fund of the township, such as the road or bridge fund.

In the instant situation, it would seem that the village in question could by proceeding under the provisions of Sections 6442 and 6446, General Code, file a petition with the county commissioners for such drainage improvement.

May I call your attention to Section 6691, General Code, which may be of assistance to you. Such section reads:

“In any township or townships in which a ditch, drain or watercourse or part thereof has been or may hereafter be located and constructed, the county commissioners for the purpose of keeping such ditches, drains or watercourses clean and in repair, may delegate such duty to the county surveyor who shall execute the necessary work and assess the cost thereof in accordance with the provisions of this chapter as they relate to the duties of a ditch supervisor, or employ a ditch supervisor for such township; the same person may be employed as a ditch supervisor for one or more townships in the county; no person shall be so employed unless he is a resident of the county in which he is employed; he may be removed by the county commissioners at any time for cause, and his duties may be delegated to another supervisor or the county surveyor, or another supervisor may be appointed in his place. * * *

See also 14 Ohio Jur. 829.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that township public funds may not be expended for the payment of the cost of cleaning a ditch located within such township.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4531.

COUNTY RECORDER—MUST RECORD DEED ALTHOUGH REVENUE STAMPS HAVE NOT BEEN ATTACHED—NO RESPONSIBILITY TO SEE STAMPS HAVE BEEN ATTACHED.

SYLLABUS:

Section 725, of "The Revenue Act of 1932," enacted by the recent Congress, places no duty upon the county recorder to determine whether revenue stamps in