

by the State of Ohio; thence westerly parallel with St. Clair Street thirty-one (31) feet, more or less, to the Kuehn lot; thence northerly parallel with Second Street along the line of the Kuehn lot eighty-one (81) feet, more or less, to St. Clair Street; thence easterly on the line of St. Clair Street thirty-one (31) feet, more or less, to the place of beginning; said premises including what was known as Block House Lot III, as shown by the original plat at Campus Martius Square recorded on page 153 of the record of Ohio Company's lands; being the same premises conveyed by Joseph C. Brenan and wife to the said grantors by deed dated May 8, 1928."

This deed, which is signed by Helen C. Hill Sloan, Trustee, representing Marietta Local Circle of Colonial Dames of America in the State of Ohio, Mary Dawes Beach, Trustee, representing the Washington County Pioneer Association, Rowena Buell, Trustee, representing the Woman's Centennial Association of Washington County, Ohio, and Katherine Parr Nye, Trustee, representing the Marietta Chapter National Society Daughters of the American Revolution, conveys the above described property to the State of Ohio in pursuance of the trust under which said grantors hold title to said above described premises, to be used for the same purpose as is made of Campus Martius proper, acquired by the state under authority of the act of March 21, 1917, 107 O. L. 615. An examination of said deed so submitted shows that the same has been properly executed and acknowledged by the above named grantors and that the same is in form sufficient to convey a fee simple title to the above described premises to the State of Ohio for the uses and purposes therein mentioned, and said deed is accordingly herewith approved.

Said act above referred to, authorizing the purchase of the original Campus Martius site, provided that the deeds therefor should be approved by the Governor and the Attorney General. It is suggested, therefore, that in addition to the approval of the Attorney General herewith endorsed, the approval of this deed by the Governor be secured and endorsed thereon. After this is done, said deed should be filed with the Recorder of Washington County, Ohio, for record and then deposited with the Auditor of State, as required by the provisions of Section 267, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2117.

CANAL—ABANDONMENT—MIAMI AND ERIE CANAL DIRECTOR OF HIGHWAYS CUSTODIAN OF CANAL AND LANDS ADJACENT—MUST BE USED FOR HIGHWAY PURPOSES.

**SYLLABUS:**

*Under the provisions of the act of April 21, 1927, 112 O. L. 388, providing for the abandonment of that portion of the Miami and Erie Canal from a point 500 feet north of the state dam near the corporation line of the city of Middletown, Butler County, Ohio, to the terminus of said canal at St. Bernard in the city of Cincinnati, Hamilton County, Ohio, for highway purposes, the Director of Highways is invested with the custody and control, for the purposes of said act, of not only the canal property abandoned by said act, but also all lands of the State of Ohio adjacent thereto,*

and used in connection with said portion of the Miami and Erie canal abandoned by said act.

COLUMBUS, OHIO, May 18, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication in which you request my opinion on certain questions arising out of an act passed by the 87th General Assembly, 112 O. L. 388, providing for and effecting an abandonment of that portion of the Miami and Erie Canal from a point five hundred feet north of the State Dam near the corporation line of the city of Middletown, Butler County, Ohio, to the present terminus of said canal at St. Bernard in the city of Cincinnati, Hamilton County, Ohio. You ask whether the highway director has jurisdiction over the entire canal property thus abandoned or merely such as he may sell for highway purposes. In this connection you further say:

“It was evidently the intention of the General Assembly to separate the work of the Department of Public Works from that of the State Highway Department, but since the state owns various tracts of land adjacent to the canal property, but not a part of the canal lands proper, on which are located residence buildings, once used by lock-tenders, and which are now rented and producing revenues to the state, the same as various canal land and water leases, we would appreciate it very much if you would render a decision showing to which department these abandoned canal lands proper, and all state lands adjacent thereto, lying between a point five hundred (500) feet north of the state dam near the corporation line of Middletown, Butler County, Ohio, and St. Bernard, in the city of Cincinnati, Ohio (see Section 14153-1, General Code), are accredited for administrative purposes.”

Section 154-3, General Code, as amended, 112 O. L. 478, provides for the Department of Public Works as a separate administrative department to be administered by the Superintendent of Public Works, as director thereof. Section 154-40, General Code, as amended, 112 O. L. 479, provides in part as follows:

“The Department of Public Works shall have all powers and perform all duties vested by law in the Superintendent of Public Works and the State Building Commission. Wherever powers are conferred or duties imposed upon any such department, offices or officers, such powers and duties shall, except as herein provided, be construed as vested in the Department of Public Works.

In addition to the powers so transferred to it, the Department of Public Works shall have the following powers:

\* \* \* \* \*

(9) To lease unproductive and unused lands or other property under the control of the state government, or any department, office or institution thereof, excepting school and ministerial lands.

\* \* \* \* \*

(12) To exercise general custodial care of all real property of the state.”

The comprehensive powers given to the Department of Public Works by the above quoted provisions of Section 154-40, General Code, are in themselves sufficient to vest in said department the custody and control of the abandoned canal lands here in question, unless the provisions of said act effecting the abandonment of said canal property vests the custody and control of such property in some other officer or

department. The act here in question, providing for the abandonment of the above described portion of the Miami and Erie Canal, has been carried into the General Code as Sections 14153-1 to 14153-10, inclusive. Sections 14153-1, 14153-2, 14153-3, 14153-5, 14153-6 and 14153-7, General Code, as separate sections of said act, provide as follows:

Sec. 14153-1. "That the portion of the Miami and Erie Canal lying between a point, five hundred feet north of the state dam, near the corporation line of the city of Middletown, Butler County, Ohio, to St. Bernard, in the city of Cincinnati, Hamilton County, Ohio, be and the same is hereby abandoned for canal and hydraulic purposes."

Sec. 14153-2. "The State of Ohio reserves unto itself, the title to all lands and waters to which it is entitled under the various acts providing for the construction of the Miami and Erie Canal and all lands now occupied by any part of the same Miami and Erie Canal, including all lands used for lock houses, waste ways or for any other purposes, and now the property of the State of Ohio."

Sec. 14153-3. "So much of said lands as were used and occupied by the Miami and Erie Canal shall be forever held for the State of Ohio in fee simple, and held by the state for the purpose of constructing upon the said lands, a highway, to be erected, constructed and improved at such time or times as the State of Ohio may hereafter either by legislative enactment, or otherwise, find proper and convenient."

Sec. 14153-5. "As soon as practicable, after this act goes into effect, the director of highways of the State of Ohio, shall cause surveys to be made of the canal property herein abandoned, together with maps and plats of the same, and of all lands used in connection with that portion of the Miami and Erie Canal, hereby abandoned, belonging to the State of Ohio adjacent thereto, and file a copy thereof with the governor."

Sec. 14153-6. "The Director of Highways is further directed to make a plat or plan, showing the highway, its length, grades and width of so much of the canal property as may be used for such highway purposes, and all other lands adjacent thereof that may be leased for other purposes."

Sec. 14153-7. "Until said highway shall be constructed and improved, no portion of the lands within the plat or plan showing such highway shall be leased for any purpose whatever, except as hereinafter provided, but until the State of Ohio shall construct and improve said lands for a highway, all municipal corporations through which said highway shall pass when completed shall be permitted to use said canal lands for public purposes only, without compensation. Lands reserved for highway purposes as shown on said plat may be leased to municipalities, individuals, firms or corporations under the direction of the Director of Highways in the same manner as provided in the following sections, except that all such leases shall be subject to cancellation by the state, whenever construction of such highway is begun."

Section 14153-8, General Code, provides in part 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 Director of Highways."

The further provision to this section prescribes the manner and terms in and upon which such leases shall be executed.

Although at the time this act abandoning the above described portion of the Miami and Erie Canal was enacted the Director of Highways was, so to speak, likewise Director of the Public Works of the state, I am inclined to the view that the provisions of said act refer to the Director of Highways in his capacity as Director of the Division of Highways, and not to such officer in his capacity as Superintendent or Director of Public Works.

The provisions of Sections 14153-5 and 14153-6, General Code, directing the Director of Highways to make the survey maps and plats therein provided for, quite clearly refer to said officer in his capacity as Director of the Division of Highways, and, conformable to established rules of construction, it is to be presumed that the term "Director of Highways" as used in the other provisions of the act have the same meaning and significance unless the context of the act plainly calls for a different construction with respect to the meaning of the term.

In the case of *Rhodes vs. Weldy*, 46 O. S. 234, it was held :

"Where the same word or phrase is used more than once in the same act in relation to the same subject-matter and looking to the same general purpose, if in one connection its meaning is clear and in another it is otherwise doubtful or obscure, it is in the latter case to receive the same construction as in the former, unless there is something in the connection in which it is employed, plainly calling for a different construction."

It appears from the consideration of this act that the main purpose in the enactment of the same was to provide for the construction of a highway on and over that part of the Miami and Erie Canal, the abandonment of which is affected by the amendment of said act. This circumstance is in accord with the view that it was the intent of the Legislature to vest in the Director of Highways as such, the control and custody of the canal property so abandoned for the purposes of said act.

With respect to this question, it may be noted that the act here under consideration was passed April 21, 1927, and that a short time previously, to-wit, on April 4, 1927, the Legislature passed a similar act providing for the abandonment of a portion of said Miami and Erie Canal in Lucas County for highway purposes, and in said act it was expressly provided that the term "Highway Director" as used therein, should be construed to mean any officer, commission, board or department that might be established by law for the control of public highways. See 112 O. L. 360, 363. Inasmuch as the two acts are quite similar both as to purpose and as to provisions it is to be presumed that the Legislature intended the term "Highway Director" to have the same meaning in both acts.

It is of some interest to note, also, that on the same day the act here under consideration was passed, the Legislature passed the Norton-Edwards Act, which carried with it an amendment of Section 154-3, General Code, which amendment effected the segregation of the Division of Highways and Public Works which had previously constituted the Department of Highways and Public Works, thereby providing for the Department of Public Works to be administered by the Superintendent of Public Works as director thereof, and the Department of Highways to be administered by the Director of Highways thereby created.

Assuming therefore that the term "Director of Highways" as used in this act means the officer that we now know as the Director of Highways, it seems quite clear that this act vests in such Director of Highways for the purposes of said act, the custody and control of not only that part of the abandoned canal property which is to be used for highway purposes, but all of said canal property so abandoned.

As I see it, the only real question here presented is whether or not land belonging to the State of Ohio adjacent to said canal property, and formerly used in connection

with said Miami and Erie Canal, likewise vests in the control and custody of the Director of Highways as such, for the purposes of such act. As to this, it will be noted that under the provisions of Section 14153-5, General Code, the Director of Highways is required to make maps and plats of not only the canal property abandoned by said act but also "all land used in connection with that portion of the Miami and Erie Canal, hereby abandoned, belonging to the State of Ohio adjacent thereto."

Likewise under the provisions of Section 14153-6, General Code, the Director of Highways is required not only to make a plat or plan of so much of the canal property as may be used for highway purposes, but such plat or plan is likewise required to show "all other lands adjacent thereof (thereto) that may be leased for other purposes."

Section 14153-7, General Code, authorizes the Director of Highways to effect temporary leases of that part of said abandoned canal property that is to be later used for highway purposes, and as above noted, Section 14153-8, General Code, authorizes the Director of Highways to lease in the manner and under the terms therein provided for, "all other lands which may be shown on said plat adjacent to said highway and which will not be used for highway purposes."

It is quite certain that the map and plats provided for by Section 14153-5, of the General Code, will show not only the canal property abandoned by said act, but likewise all property of the State of Ohio adjacent thereto, which in former times has been used in connection with the operation of said canal such as tracts of land upon which have been erected residence buildings for the use of lock tenders and other property of like kind.

The provisions of Section 14153-6, General Code, are not so clear with respect to the question under consideration. But reading this section together with the other provisions of said act, I am inclined to the view that the language therein, "all other lands adjacent thereto that may be leased for other purposes," requires the plat or plan therein provided for to show not only the boundaries of highways to be constructed on said canal property, but all other canal property and adjacent lands of the State of Ohio as well.

Arriving at this conclusion with respect to the operation of Sections 14153-5 and 14153-6, General Code, with respect to the lands to be shown in the maps and plats therein provided for, it follows that Section 14153-8, General Code, authorizes the Director of Highways as such to lease not only such of the abandoned canal property as may not be used for highway purposes but also lands of the State of Ohio adjacent thereto, which formerly have been used in connection with that part of the Miami and Erie Canal abandoned by said act.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2118.

ROAD—DEDICATION BY DEED OR AFFIRMATIVE ACTION—ACCEPTANCE BY PUBLIC USE OR LEGISLATIVE ACTION NECESSARY—SECTIONS 18 AND 7464, ET SEQ., GENERAL CODE, DISCUSSED.

*SYLLABUS:*

*Under Section 18 of the General Code, as well as independent of its provisions, the State of Ohio may receive a donation of land as right of way for a public road, whether*