

157. The use of the water for hydraulic purposes was only incidental and subordinate to the declared purpose of the state to promote navigation and was expressly made so by the Leasing Act of 1840, which limited all leases to the use of surplus water not required for purposes of navigation and provided for their abrogation whenever the use of the water for hydraulic purposes interfered with navigation. Leases of surplus water, granted under the Act of 1840 and similar in terms to those involved in the present litigation, have been repeatedly construed by the highest court of the state of Ohio, which has uniformly held that they were only incidental to the use and maintenance of the canal for purposes of navigation; that they imposed no obligation on the state to maintain the canal either for navigation or other purposes and when abandoned by the state the right of lessees to surplus water ceased. *Hubbard vs. Toledo* (1871) 21 Ohio St. 379; *Little Miami Elevator Co. vs. Cincinnati* (1876) 30 Ohio St. 629; *Fox vs. Cincinnati* (1878) 33 Ohio St. 492; *Vought vs. Columbus, H. V. & A. R. Co.* (1898) 58 Ohio St. 123, 161, 50 N. E. 442."

I am of the opinion therefore that neither the Maumee Valley Electric Company, as the successor in interest under the Pilliod lease, nor any other corporation or person claiming through or under it has now any legal right to take water from the Miami and Erie Canal at this point for hydraulic power purposes. What the disposition of your department may be with respect to the continued use of water from the canal for hydraulic power purposes at this place is, of course, a matter for your determination.

Respectfully,

JOHN W. BRICKER,
Attorney General.

967.

APPROVAL, BONDS OF VILLAGE OF WILLOUGHBY, LAKE COUNTY,
OHIO—\$3,400.00.

COLUMBUS, OHIO, June 17, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

968.

STOCKHOLDER—LIQUIDATION OF BUILDING AND LOAN ASSOCIATION—OWNER OF PAID-UP STOCK OF SUCH ASSOCIATION NOT A CREDITOR BUT STOCKHOLDER NOT REQUIRED TO PROVE CLAIM TO PRESERVE LEGAL RIGHTS AND ENTITLED TO SHARE IN PROCEEDS FROM SALE OF ASSETS IN LIQUIDATION—PAYMENT IN EXCESS OF SUBSCRIPTION ENTITLED TO REPAYMENT.

SYLLABUS:

1. *The claims which are required to be proven to the superintendent of build-*