

demised to the lessee above named the right to occupy and use by cutting the canal banks and constructing and maintaining a railroad spur track across the Ohio Canal property west of Lock Seventeen in Clay Township, Tuscarawas County, Ohio, at Station 2367+53, of G. F. Silliman's Survey of the Ohio Canal through Tuscarawas County, made under the direction of the State Board of Public Works in 1911.

Upon examination of this lease, which is executed by you under the authority of an Act of the 89th General Assembly enacted April 29, 1931, 114 O. L., 541, I find that the same has been executed by you in your official capacity above stated and by The Ross Clay Product Company, acting by the hand of its Secretary pursuant to a resolution of the Board of Directors of said company duly adopted under date of March 14, 1938.

Assuming, as I do, that this property has not been designated for state highway purposes and that no application for the lease of the same has been made by any of the corporations or persons having prior rights to the lease of this property under Section 8 of said act, I find that the terms and provisions of this lease and the conditions and restrictions therein contained are in conformity with the above mentioned act of the legislature and with other related statutes. I am, therefore, approving this lease, 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.

2307.

STATUS—CANAL LAND LEASE, STATE OF OHIO, THROUGH SUPERINTENDENT OF PUBLIC WORKS, WITH JOHN E. RAPP, PORTSMOUTH, OHIO, TERM FIFTEEN YEARS, ANNUAL RENTAL \$54.00, FOR AGRICULTURAL PURPOSES, DESCRIBED PORTION, OHIO CANAL PROPERTY, WASHINGTON TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, April 13, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent com-

munication with which you submit 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 John E. Rapp of Portsmouth, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$54.00, there is leased and demised to the lessee above named the right to occupy and use for agricultural purposes all of that portion of the abandoned Ohio Canal property, including the bed and banks thereof, located in Washington Township, Scioto County, Ohio, which is described as follows:

First Tract: Beginning at the northerly end of the lands now owned by Dr. Howard Williamson at Station 2464+98, and running thence in a southwesterly direction ten hundred and eighty-two (1082') feet, more or less, to the southerly line of the said Williamson lands at Station 2475+68.7, and containing one and nine-tenths (1.9) acres, more or less.

Second Tract: Beginning at Dry Run Culvert at Station 2483+18, and running thence in a southwesterly direction twenty-seven hundred and two (2702') feet, more or less, to the southerly line of the lands of Dr. Howard Williamson at Station 2510+20, and containing five (5) acres, more or less.

This lease is executed under the general authority conferred upon you by Section 13965, General Code, and under the more special provisions of the Act of June 7, 1911, 102 O. L., 293, as amended by the later act of the 88th General Assembly passed April 5, 1929, 113 O. L., 524. By this later act, municipalities and owners of abutting property, in the order named, are given prior rights with respect to the lease of canal lands abandoned by said act which are located in the municipality. In this situation, I assume, with respect to the lease here in question, that no owner of abutting property other than the lessee above named has now pending any application for the lease of this property which would make this lease to John E. Rapp in any respect illegal.

With this assumption I find, upon examination of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with the statutory provisions above referred to and with other statutes relating to leases of this kind. And since it appears that this lease has been executed by you as Superintendent of Public Works and as Director of said department, and by John E. Rapp, the lessee therein named, in the manner pro-

vided by law, I am approving this lease as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2308.

COURT CONSTABLES—AUTHORITY TO APPOINT AND TO FIX COMPENSATION—LODGED IN ALL COMMON PLEAS JUDGES -- NOT IN INDIVIDUAL JUDGE — AUTHORITY NOT DELEGATED TO ONE JUDGE-- WHEN COUNTY AUDITOR MAY REFUSE TO DRAW WARRANT.

SYLLABUS:

1. *The authority to appoint court constables is lodged in the court of common pleas and not in the individual judges of such court. In a county having four common pleas judges, all four of the judges comprise the court of common pleas of such county and all four of such judges must join in the appointment of court constables, as provided by Section 1692 G. C.*

2. *All four such judges of the court of common pleas in such county, must join in fixing the compensation to be paid to court constables of such court, as provided by Section 1693 G. C.*

3. *Where the law plainly states that the court, in the one instance shall make such appointment and the judges of the court, in the second instance shall fix their compensation, such authority is carried to all the members of such court and all members are required to act, nor can the judges of such court delegate such authority to one of their number.*

4. *Where and when, in a county the court of common pleas consists of four judges, and one of the judges appoints a court constable, fixes his compensation and executes a voucher to the county auditor for the payment of such salary, the county auditor may refuse to draw a warrant thereon.*

COLUMBUS, OHIO, April 14, 1938.

HONORABLE A. C. L. BARTHELMEH, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows: