

245.

APPROVAL, FINAL RESOLUTION FOR GRADE ELIMINATION NEAR  
ORLAND STATION, VINTON COUNTY, OHIO.

COLUMBUS, OHIO, March 28, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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246.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
FRANKLIN AND MAHONING COUNTIES.

COLUMBUS, OHIO, March 28, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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247.

STATE OF OHIO—MAY ACCEPT SPECIFIC DEVISE AND BEQUEST BY  
APPROPRIATE LEGISLATION.

*SYLLABUS:*

*Devise and bequest made to the State of Ohio on the conditions therein prescribed by the last will and testament of Hayward H. Kendall, deceased, considered. Held: that the State has authority at this time to accept said devise and bequest by appropriate action by the General Assembly.*

COLUMBUS, OHIO, March 28, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This is to acknowledge receipt of your recent communication in which you refer to a devise and bequest made to the State of Ohio by the last will and testament of Hayward H. Kendall, deceased, and in which you ask my opinion whether said devise and bequest can be accepted by the State at this time and as to what conditions or financial obligations will be imposed upon the state by its acceptance of the same.

The subject of the devise referred to in your communication, is a certain tract of farm lands suitable for park purposes in Boston Township, Summit County, Ohio, which Mr. Kendall owned at the time of his decease. By the last will and testament of Mr. Kendall the legal title to this property was devised in trust to The Guardian Trust Company of Cleveland, Ohio, during such time as the same should be occupied and used by his wife, Agnes T. Kendall, with the provision that upon the decease of his wife or in the event of her election to voluntarily relinquish all in-

terest in said farm property, the same should be and become the property of the State of Ohio, provided the same should by proper official action be accepted upon the following terms and conditions, to wit :

“(a) Said property shall be perpetually used for park purposes.

(b) Said property shall be perpetually known as “Virginia Kendall Park,” a memorial to my mother, Virginia Hutchinson Kendall.

(c) Said park shall be property dedicated to perpetual use by the public, and shall be under the supervision and management of such park board, park commission, or other officials, either state, county, municipal or township, as the State of Ohio shall by official action determine.

(d) Said park shall be open to the general public, under proper rules and regulations as determined by those to whom the supervision and management of said park shall have been intrusted.”

With respect to the net income from the estate of said Hayward H. Kendall which is the subject of the bequest referred to in your communication, the last will and testament of said testator provides that after the payment from such net income of the sum of \$5,000 annually to one Susanne Kendall Root during her lifetime, the residue of the net income from said estate, which I am advised amounts to more than a million dollars, shall be paid to said Agnes T. Kendall during her lifetime, with the provision that from time to time portions of the principal trust estate may be paid over to said Agnes T. Kendall by said trustee if because of emergency or unusual conditions the income from said estate shall be insufficient to properly provide for her comfortable maintenance and support, but that the total amount of the principal sum of said estate so paid over to her shall not exceed the sum of \$35,000.

Item 6 of said last will and testament provides as follows :

“Subject to the above provisions for the benefit of my wife, Agnes T. Kendall, and my sister, Susanne Kendall Root, the entire net income from the trust estate shall be payable to the State of Ohio, if my said farm property be accepted by it as heretofore provided, or if not, then to such other ultimate devisee of said Virginia Kendall Park property as hereinbefore provided, which income shall be used for the upkeep, maintenance, support, improvement and enlargement of said park in such manner as those intrusted with the management thereof shall from time to time determine. This bequest of income to the devisee of said park is subject only to the conditions that such devisee shall at least annually make a complete itemized report and statement of all expenditures of such income to the trustee of my estate, and shall if required by the trustee to do so, exhibit vouchers evidencing all expenditures.”

The estate and interest taken by the State of Ohio under the devise and bequest is a present vested estate and interest in said tract of farm lands and in the net income of the estate of said testator, the use and enjoyment of which only are postponed in favor of said Agnes T. Kendall during her life.

With respect to your first question, it may be stated as a general proposition that a State has the same rights and powers in respect to property as an individual; and that it may acquire property, real or personal, by conveyance, will or otherwise, and hold and apply such property for any public purpose. See 36 Cyc., page 869, Touching this question, Section 18, General Code, provides :

“The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors,

trustees, or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

It thus appears that under the provisions of the section of the General Code above quoted, as well as independent of its provisions, the State of Ohio is authorized to receive by devise and bequest or otherwise, real or personal property for public purposes.

However, before property donated to the State by will or otherwise can become vested in the State for any purpose, it must accept the same in some authorized manner. If there is no general or permanent statutory provision authorizing some designated officer or board to accept property for and on behalf of the State, there is no way in which such property can be accepted otherwise than by an act of the Legislature. This is especially true where as in this case the donation to the State is not absolute and unrestricted, but is in trust for some particular purpose. See *State vs. Blake*, 69 Conn. 64.

By way of specific answer to your first question, therefore, I am of the opinion that the devise and bequest referred to in your communication may be accepted by the State at this time, and that the only way in which such acceptance can be made effective is by appropriate action of the Legislature.

With respect to your second question, it will be noted that the last will and testament of Hayward H. Kendall contemplates that his wife, Agnes T. Kendall, may relinquish her right to the use and occupancy of said tract of farm lands before her death. In this event said tract of land will immediately come into the use and occupancy of the State by full fee simple title; and inasmuch as the State under said will will not come into enjoyment of the net income of the estate of Hayward H. Kendall for the purpose of maintaining said park until the death of Agnes T. Kendall, it is apparent that in such case there will be a period of time, depending upon the life of said Agnes T. Kendall, during which said tract of land will have to be maintained as a park out of public moneys, which I take it will be paid out of appropriations made to the Ohio Agricultural Experiment Station, Division of Forestry, under Items F-9 or C-1. In this connection, I am advised that said property and the improvements thereon are in a good state of preservation and that comparatively little money will be needed in the maintenance of the same.

Pursuant to your request made in the communication above referred to and your later communication under date of March 20, 1929, I am preparing suitable legislation providing for the acceptance of the devise and bequest.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

248.

APPROVAL, DEED TO MIAMI AND ERIE CANAL LAND IN THE CITY OF CINCINNATI—MARY C. COSTELLO.

COLUMBUS, OHIO, March 29, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and approval deed form to be executed by the Gover-