

560.

APPROVAL, BONDS OF VILLAGE OF FAIRFIELD, GREENE COUNTY,
OHIO—\$23,000.00.

COLUMBUS, OHIO, June 27, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

561.

APPROVAL, BONDS OF FRANKLIN COUNTY, OHIO—\$77,615.00.

COLUMBUS, OHIO, June 27, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

562.

DISAPPROVAL, LEASE TO MIAMI AND ERIE CANAL LAND IN MIAMI
COUNTY—MIAMI VALLEY RAILWAY COMPANY.

COLUMBUS, OHIO, June 27, 1929.

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

DEAR SIR:—You recently submitted for my examination and approval a certain lease in triplicate executed by the State of Ohio through you as Superintendent of Public Works, by which there is leased to the Miami Valley Railway Company, for a term of ninety-nine years, renewable forever, a right of way for railway, coal line and other related purposes in, upon and over certain portions of the berme embankment and state lots of the abandoned Miami and Erie Canal in Miami County, Ohio. The right of way so leased is about two and one-half miles in length and is more particularly described in this lease.

From the records of your office it appears that said lessee company has occupied substantially the same canal land since the year of 1903 under successive leases granted to it by the State, and that it is now occupying such property under a lease executed to it under date of November 1, 1918, which lease is to be automatically cancelled upon the approval by the Governor of the lease here in question.

This lease is one executed under the assumed authority of Sections 9 and 15 of House Bill No. 162, passed by the Legislature March 25, 1925, the same being an act providing for the abandonment for canal purposes of that portion of the Miami and Erie Canal between the Maumee River at Defiance in Defiance County, Ohio, and

a point five hundred feet north of the Middletown dam near the north corporation line of the city of Middletown, Butler County, Ohio. 111 O. L. 208.

For the purposes of this opinion, it is not necessary to quote or to discuss at length the provisions of the act of the General Assembly above referred to.

Section 5 of said act provides that any city, village or other political subdivision of the state desiring to lease any portion of said abandoned canal and feeder lands, basins, wide waters and state lots heretofore used in connection with canal property lying within or adjacent to the boundaries of such political subdivision, may, within one year from the effective date of said act, file an application for a lease of the same with the Superintendent of Public Works.

Section 9 of said act provides as follows :

“As soon as the appraisalment of the canal lands applied for by municipalities or other legal subdivisions of the state has been completed, the superintendent of public works, subject to the approval of the governor and attorney general, shall proceed, subject to all rights under existing leases, other than as hereinafter specified, to lease the canal land herein abandoned for canal purposes, in strict conformity with the provisions of this act, but the owner of an existing leasehold for canal lands, which prior to January 1, 1925, has been improved by the construction of railway tracks thereon, or by the erection of substantial buildings thereon, other than buildings erected for use of gasoline and oil filling stations, may file an application within one year from the date from which this act becomes effective with the superintendent of public works for permission to surrender his present leasehold and take a new lease thereon under the terms of this act, but no renewals of leases of canal property which has not been improved, as hereinbefore stated, prior to January 1, 1925, shall be made. The annual rentals for such new leases shall be at the rate of six per cent annually, and when such leasehold has been renewed, it may be assigned by said superintendent of public works to the municipality making the application to lease the canal lands within its corporate limits.”

Inasmuch as the Miami Valley Railway Company occupied the canal property covered by this lease prior to January 1, 1925, said company under the provisions of Section 9 of said act above quoted, had the right to file an application within one year from the effective date of said act, for permission to surrender its then existing lease on said canal property and take a new lease thereon under the provisions of said act.

The records of your office show that said company made application for the new lease here in question on July 12, 1926, which was within the period of one year from the effective date of said act.

Section 15 of the act above referred to provides as follows :

“The abandoned canal lands covered by this act of abandonment lying outside of municipalities and not included in an application for lease by an adjacent municipality, or other legal subdivision of the state, may be leased in strict conformity with existing statutes relating to the leasing of canal lands, except that the entire width of the canal and its embankments may be included in such leases and that the terms thereof may be for fifteen years and multiples thereof, but subject to reappraisal at the end of each fifteen year period by proper state authority.”

Inasmuch as the canal property of the state covered by this lease lies outside of

any municipality, the provisions of Section 15 apply with respect to the term of a lease executed to any person or corporation other than a municipality or other legal subdivision of the state making application for a lease of said property. By the provisions of Section 15 of said act above quoted, such lease may be for fifteen years or multiples thereof.

As above noted, the lease here in question is one for a stated term of ninety-nine years, renewable forever, and said lease in this respect is not in conformity with the provisions of said act.

Since you as Superintendent of Public Works, have only such authority with respect to the matter of leasing canal lands of the state as is expressly given to you by statute (*State ex rel. vs. Railway Company*, 37 O. S. 157, 174), I am required to hold that you have no authority to execute a lease for the canal property here in question, to said company for a term other than that in conformity with the provisions of said act, and said lease is hereby returned without approval.

Respectfully,

GILBERT BETTMAN,
Attorney General.

563.

SCHOOL DISTRICT—TAXES LEVIED UNDER SECTION 7575, GENERAL CODE—HOW PROCEEDS FOR 1928 AND 1929 APPORTIONED—WHEN EDUCATIONAL SURVEY OF COUNTY BOARD OF EDUCATION TO BE MADE.

SYLLABUS:

1. *The proceeds of the 2.65 mills tax levy provided for by Section 7575, General Code, for the fiscal year 1928, the last half of which is collected in the June, 1929, tax collection, should be apportioned to school districts lying outside of city or exempted village school districts in accordance with the "annual distribution" of those taxes made by the county auditor in 1928, by authority of the then existing Section 7600, General Code.*

2. *The proceeds of the 2.65 mills tax levy provided for by Section 7575, General Code, for the fiscal year 1929, and collected in the December tax collection of 1929 and the June tax collection of 1930, should be apportioned to school districts lying outside of city and exempted village school districts in accordance with Section 7600, General Code, as amended by the 88th General Assembly.*

3. *The making of an educational survey by the county board of education as directed by the terms of amended Section 7600, General Code, contained in House Bill No. 256 of the 88th General Assembly, is a condition precedent to the making of the "annual distribution" of the 2.65 mills tax levy provided for by Section 7575, General Code, to the school districts outside of city and exempted village school districts.*

4. *The requirement of Section 7600, General Code, as amended by the 88th General Assembly, that each county board of education shall make an educational survey of the county school district for certain purposes on or before the first day of April of each year, is directory merely, so far as the time of making the survey is concerned, and if, for any reason, the survey is not made within the time fixed by the statute, it*