

to the company to renew said lease for an additional period of ten years, or for such other period of time as may be permitted by law. The lease to the company of the right to take from said canal surplus water that may be needed by the company for power and other purposes in the operation of its mills, is for the stated term of twenty-five years from the first day of May, 1932.

By the provisions of the lease here under consideration the company is to pay the state of Ohio an annual rental of ten thousand five hundred dollars, payable in semi-annual installments of five thousand two hundred and fifty dollars each, in advance, on the first days of May and November of each and every year during the continuance of the lease. Of said annual rental of ten thousand five hundred dollars, three thousand dollars thereof is for the canal land, this amount being six per cent of the sum of fifty thousand dollars, which is the appraised value of said canal lands as found by the superintendent of public works and stated in the lease; and the balance of the amount of the aggregate annual rental above stated is for the use of the water to be taken by the company from the canal.

A similar lease to The American Steel and Wire Company covering this same section of the Ohio Canal and granting to the company the right to take therefrom water for a term of twenty-five years was considered and approved by me as to legality and form by Opinion No. 1511, addressed to you under date of February 10, 1930. This lease, for some reason, was not approved by the then Governor of the state. Aside from the fact that the lease here under consideration provides for an increase of five hundred dollars in the aggregate annual rental to be paid the state over that provided for in the former lease above referred to, and the fact that this lease is to operate from the first day of May, 1932, instead of from the first day of May, 1930, as in said former lease provided, this lease is quite identical in all of its provisions with the lease considered and approved by me in Opinion No. 1511, above referred to.

In view of the fact that the legal questions involved in the consideration of this lease are fully discussed in said former opinion, I do not deem it necessary to set out in this opinion the reasons which in point of law led me to an approval of the other lease, and which are applicable to the lease now before me.

It appearing, therefore, that this lease has been executed by you in the manner provided by law and that the same has been likewise executed by The American Steel and Wire Company through and by its president and secretary in the manner provided by law and a resolution of the board of directors of said company, this lease is approved by me as to legality and form for the reasons further stated in my former opinion above referred to. I am herewith returning to you this lease and the duplicate and triplicate copies thereof with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3840.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS RESIDENT DIVISION DEPUTY DIRECTOR—H. D.
SCHOONOVER.

COLUMBUS, OHIO, December 10, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3841.

COUNTY TUBERCULOSIS HOSPITAL FUNDS—CLASSED AS COUNTY FUNDS AND TRUSTEES OF HOSPITAL UNAUTHORIZED TO DEPOSIT SUCH FUNDS—SURETY COMPANY LIABLE ON THEIR BOND EVEN THOUGH FUNDS IRREGULARLY DEPOSITED.

SYLLABUS:

1. *The trustees of a county tuberculosis hospital do not have the custody of the funds appropriated for the maintenance of the hospital and are not authorized to deposit those funds in a bank. Such funds are county funds, and their custody is in the county treasurer, who should deposit them in the regular county depository in accordance with the county depository law.*

2. *When the trustees of a county tuberculosis hospital unlawfully have the custody of funds appropriated for the maintenance of the hospital and deposit those funds in a bank, whether the county depository bank or not, and the bank secures the deposits by the giving of an undertaking, such undertaking may be enforced according to its terms, in the event of default on the part of the bank, and such undertaking remains in force according to its terms so long as the deposit remains, or until it expires by limitation of time in accordance with its terms or is cancelled by consent of the parties.*

COLUMBUS, OHIO, December 11, 1931.

HON. R. H. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion on the following questions:

“FIRST: May a surety company be released of its obligation on a depository bond covering county tuberculosis hospital funds.

SECOND: In the event a release is obtainable, is it incumbent upon the trustees of the hospital to demand withdrawal of the money or substitution of surety.

The facts are as follows:

A county tuberculosis hospital organized under Sections 3139 et seq. General Code, made a deposit of hospital funds by its board of trustees in a bank. The bank secured a surety bond to cover the deposits, and paid the premium therefor. Thereafter, and before the expiration of the period of coverage provided for in the surety bond, the surety company took the following steps in an effort to cancel said surety bond and be released from the obligations of same, in accordance with Section 2725, General Code.

First: Informed the depository bank it desired to be released from its obligations on the bond, and returned the unearned premium to the bank.

Second: Gave written notice separately to the County Commissioners, the County Auditor, County Treasurer, and Board of Trustees of the hospital to remove the funds of the hospital from the bank within ten days.

Third: Gave written notice to the Board of Trustees to withdraw the funds from the bank, or get new security for same.