

which there is leased and demised to one Alta E. Weddle of Troy, Ohio, the right to use and occupy for lawn and garage purposes a certain parcel of abandoned Miami and Erie canal lands located in the city of Troy, Miami County, Ohio, which parcel contains 1584 square feet of land and which is more particularly described in said lease. The lease here in question is for a term of fifteen years and calls for an annual rental of six per cent upon the sum of \$250.00, the appraised value of said parcel. This lease is executed under the authority of House Bill No. 162, passed by the 86th General Assembly, 111 O. L. 208, and I find that said lease in its provisions is in conformity with the provisions of said act and with other statutory provisions relating to canal land leases. Said lease is, accordingly, approved by me as to legality and form, and my approval is endorsed upon said lease and the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1241.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN KNOX COUNTY.

COLUMBUS, OHIO, November 30, 1929.

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

1242.

TRUSTEES OF OHIO STATE UNIVERSITY—POWER TO DISPOSE OF OBSOLETE BOOKS PURCHASED WITH PUBLIC FUNDS—AUTHORITY WITH RESPECT TO DONATED PERSONALTY.

SYLLABUS:

1. *It is within the broad powers of the Board of Trustees of Ohio State University to dispose of personal property owned by the university which was bought and paid for with public funds, when in the exercise of a sound discretion it is determined that the property is no longer needed for university purposes.*
2. *It is the duty of the board or trustees of Ohio State University, when personal property of the university is to be disposed of because no longer of any use to the university, to use every reasonable effort to dispose of the property to the best advantage of the university. If the property is no longer of any use to the university and has no sale value, it lawfully may be disposed of as scrap.*
3. *The board of trustees of Ohio State University may not lawfully dispose of personal property which has been donated to the university even though it is no longer of any*

use to the university, without first offering to return the same to the original donors, unless by the terms of the gift, the university acquired full and complete title to the property rather than the use of the property.

COLUMBUS, OHIO, December 2, 1929.

HON. GEORGE W. RIGHTMIRE, *President, Ohio State University, Columbus, Ohio.*

MY DEAR MR. RIGHTMIRE:—This will acknowledge receipt of your letter by which you request my opinion with respect to the disposition of certain obsolete and practically worthless reference books and texts now in the university library. Some of the books I understand, were purchased in the first instance, with university funds; others were donated. All of them were valuable in their time but have served their purpose, and are not now of sufficient value to warrant shelf-room which is badly needed for new and more useful works.

Ohio State University is a public institution, maintained, to a great extent, from public funds appropriated by the General Assembly. Its government is vested in a board of seven trustees appointed by the Governor, with the advice and consent of the Senate. These trustees are public officers, and collectively constitute the "Board of Trustees of Ohio State University" which is endowed by statute with corporate existence and with the right as such, of suing and being sued, contracting and being contracted with and of making and using a common seal. It is authorized generally to conduct the affairs of the university. Section 7942, et seq.

Specific authority is given to the board of trustees by Section 7948, General Code, to adopt by-laws, rules and regulations for the government of the university, and Section 7950, General Code, provides that the board of trustees shall have general supervision of all lands, buildings and other property belonging to the university, and shall have control of all expenses of the university, but shall never contract any debt not previously authorized by the General Assembly of the State.

It is a well recognized principle of law that public officers have such powers only as are expressly granted, including power to do all things necessary to consummate and carry to fruition the powers so expressly granted. This does not mean that each and every act a public officer lawfully may perform must be expressly stated and detailed in express terms. The general power to accomplish an ultimate end, carries with it the power to act in such manner as becomes necessary to accomplish the end. Some difficulty of course is met in determining at all times just when the necessity of acting for the accomplishment of a purpose begins and ends. In many such cases there is room for a difference of opinion. There would hardly be any dispute, however, about the right of a public officer to discard totally worthless property under his jurisdiction, if in fact, the property is worthless and a hindrance to him in the performance of his public duties.

There is no power expressly granted to the Board of Trustees of Ohio State University to sell or dispose of in any manner, property no longer needed for the purposes of the university, or to destroy property, the keeping and care of which would be burdensome and which has no sale value, yet there can be little question that if such property is of no use to the university, it may be sold and the proceeds of the sale used for other purposes, without going to the Legislature for express authority therefor. Likewise, there would seem to be little question that if property is totally worthless and simply in the way, it may be scrapped and gotten out of the way, even though no express authority has been granted to the trustees of the university so to do.

A board of trustees is charged with the duty of governing the university, to the end that the proper purposes of the university may be carried out, and is expressly granted general supervision of all the property of the university for that purpose. It is clearly within the right and duty of the board to so use the property under its control as to accomplish the purposes of its existence. If certain of the property becomes useless and in fact has no sale value, and is more bother than it is worth, it would seem

clearly to be within the power of the trustees to dispose of it to the best advantage of the university, and if that consists of its being disposed of as waste paper, I have no doubt the trustees lawfully may do so.

In disposing of property, no matter what the purpose may be, whether to make room for newer and more up-to-date appliances or whether because of the worn out condition of the property the board of trustees of course is bound to look to the best interests of the university and to secure for the university the best available price.

You do not state that the books in question are of no value, but simply that they are of no value to the university. It is possible that they may be of no value to the university and yet be of some value to someone. In other words, they may have some sale value. It is the board's duty to make every reasonable effort to sell the books before determining that they are worthless and should be relegated to the scrap heap.

Upon the acquisition of any property by the board of trustees whether by purchase or gift, the board of course becomes charged with that property. The Auditor of State makes regular inspections of the property of the university, and in doing so scrutinizes the inventory of the property with which the board of trustees is charged. For that reason, if the board should determine that any of the property listed in the inventory is to be disposed of for the reason that it is no longer needed by the university or is worthless and burdensome to carry, it should be listed in a formal resolution of the board of trustees determining to so dispose of it so that proper credit will be given to the board in the inventory.

A somewhat different and perhaps more difficult question is encountered with respect to the disposition of property which has been donated to the university. There is some question whether the trustees lawfully may discard any such property, even though it be worthless to the university.

It will be noted by the terms of Section 7951, General Code, that the board of trustees are empowered to receive and *hold in trust for the use and benefit of the university, any grant or devise of land, any donation or bequest of money or other personal property* to be applied to the general or special use of the university. Section 7952, General Code, provides that the title to all lands for the use of the university shall be made in fee simple to the State of Ohio. The statutes are not explicit as to the nature of the title which may be taken or accepted by the university trustees in and to personal property other than money given to them for university purposes. It is possible the trustees have a qualified title in the books in question. That depends on the terms of the gift.

There is some doubt in my mind as to whether or not when the books you mention were given to the university, the university took such title to them as to permit them to dispose of them as it sees fit, after they are no longer of use to the university. I am inclined to the view that as to the books which the board of trustees now desires to dispose of, which books were donated to the university, the board would not have a right to dispose of them without first notifying the donors, and either securing their consent to the disposition of the books, or have them take them back unless the books were given to the university in the first place without qualifications. It is possible, of course, that the books may have some value, sentimental or otherwise, to the original donors, even though they are of no value to the university.

I am, therefore, of the opinion, in specific answer to your inquiry, that the Board of Trustees of Ohio State University in its discretion lawfully may relegate to the scrap-heap any of the books in question which were purchased with public funds, in fact the books are of no value, historic or otherwise, to the university, and have no sale value, and are burdensome to keep. Such books in possession of the university as have been donated, should first be offered in return to the donors before any action is taken looking to their being disposed of otherwise, unless it appears from the terms

of the original gift that the university acquired thereby, not only the use of the books, but also a clear and unqualified title to them.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1243.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN
CRAWFORD COUNTY.

COLUMBUS, OHIO, November 30, 1929.

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

1244.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES
AS RESIDENT DISTRICT DEPUTY DIRECTOR—E. A. DUDUIT.

COLUMBUS, OHIO, December 2, 1929.

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

DEAR SIR:—You have submitted for my approval the bond for the penal sum of \$5,000.00, upon which E. A. Duduit appears as principal and the Aetna Casualty and Surety Company appears as surety, conditioned for the faithful performance of the duties of said principal as Resident District Deputy Director assigned to Scioto County.

Finding said bond in proper legal form, I have accordingly approved the same and return it herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1245.

APPROVAL, LEASE TO OHIO CANAL LAND IN MORGAN TOWNSHIP,
SCIOTO COUNTY—WILLIAM T. GLASE.

COLUMBUS, OHIO, December 2, 1929.

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

DEAR SIR:—You have submitted for my examination and approval a certain lease indenture in triplicate executed by you in your official capacity as Superintendent of Public Works and as Director of said department, by which there is leased and demised to one William T. Glase of Lucasville, Ohio, a certain tract of 4.75 acres of land, the same being part of abandoned Ohio canal property located in Morgan Township, Scioto County, Ohio.