

An examination of the lease submitted discloses that the same has been properly executed by you as Superintendent of Public Works, and by William Sills, the lessee named in the lease.

Upon examination of the terms and provisions of the lease and of the conditions and restrictions therein contained, I find that the same are in conformity with all of the Sections of the General Code relating generally to leases of this kind, and, further, that they are in conformity with Amended Substitute Senate Bill No. 72 enacted by the Eighty-ninth General Assembly providing for the abandonment of the Ohio Canal in and through Coshocton County, Ohio, and for the sale and lease of the canal lands thus abandoned.

This lease is therefore approved by me as to legality and form and my approval is endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith inclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

757.

APPROVAL, LEASE TO HOCKING CANAL LANDS IN ATHENS
COUNTY, OHIO—PEARL LEAMAN AND MAGGIE E. LEAMAN.

COLUMBUS, OHIO, May 2, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your communication of recent date submitting 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 Pearl Leaman and Maggie E. Leaman, of Nelsonville, Ohio.

By this lease instrument, which is one for a stated term of fifteen (15) years, and which provides for an annual rental of Nine Dollars (\$9.00) there is leased, demised and granted to the lessees above named, the right to occupy and use for gardening purposes, that portion of the abandoned Hocking Canal property, including the full width of the bed and banks thereof, located in York Township, Athens County, Ohio, and more particularly described as follows:

“Beginning at the westerly line produced across said canal property of the lands of Maggie E. Leaman, said westerly line crossing the transit line of the Bruce Doughton Survey of said Canal at or near Station 2121 plus 89, and running thence easterly with the lines of said canal property and the southerly line of S. H. No. 155, as relocated in 1932, three hundred eighty-seven (387) feet, more or less, as measured along said transit line to the easterly line of the said Maggie E. Leaman's land, said easterly line crossing the said transit line at or near Station 2125 plus 76, of the said survey and containing one and twenty-five hundredths (1.25) acres, more or less.”

An examination of this lease instrument, shows that the same has been

properly executed by you in your official capacity and by the lessees above named.

Upon examination of the provisions of this lease, and of the conditions and restrictions therein contained, I find that the same are in conformity with the provisions of Sections 13965 et seq. of the General Code relating to the execution of canal land leases generally, and with those of House Bill No. 417 enacted by the Eighty-eighth General Assembly, 113 O. L. 521, relating to the abandonment of the Hocking Canal in Fairfield, Hocking and Athens Counties.

The lease here under consideration is accordingly approved by me as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith inclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

758.

EMERGENCY REPAIRS—COUNTY COMMISSIONERS REQUIRED TO
APPROPRIATE THEREFOR — PURCHASE OF MATERIALS AND
EMPLOYMENT OF LABOR EXERCISED BY COUNTY SURVEYOR.

SYLLABUS:

The provision of section 2792-1, General Code, authorizing the county commissioners to make an appropriation each year to carry out the purposes of said section, is mandatory in so far as there are available funds therefor.

COLUMBUS, OHIO, May 3, 1933.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication in which you ask my opinion as to whether or not it is the mandatory duty of the Board of County Commissioners to appropriate funds for emergency repairs, as the same are defined in section 2792-1 of the General Code. This opinion is predicated upon the assumption that there are available funds for such purpose since no facts are submitted to indicate otherwise.

In my Opinion No. 368, dated March 24, 1933, addressed to the prosecuting attorney of Hamilton County, I held that before a county surveyor can make purchases of road materials for emergency repairs, which he is authorized by section 2792-1, General Code, to make, the money required therefor must first be appropriated by the county commissioners. Said section reads in part as follows:

“The county commissioners are hereby authorized to appropriate a sum of money each year sufficient to enable the county surveyor to carry out the purposes of this section. Such sum shall constitute the ‘county surveyor’s emergency repair fund’. All expenses incurred in employing extra help or in purchasing materials used in such repairs shall be paid from such fund on vouchers signed by the county surveyor.”

Your inquiry raises the question as to whether the provision authorizing