

39.

APPROVAL—CANAL LAND LEASE, STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, TO SAMUEL ROBERTS, DESIGNATED MIAMI AND ERIE CANAL PROPERTY, CITY OF DELPHOS, VAN WERT COUNTY, OHIO, RIGHT TO OCCUPY AND USE FOR OFFICE AND GENERAL BUSINESS PURPOSES.

COLUMBUS, OHIO, January 25, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said department, acting for and on behalf of the State of Ohio, to one Samuel Roberts of Delphos, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$50.00, payable in semiannual installments of \$25.00 each, there is leased and demised to the lessee above named the right to occupy and use for office and general business purposes that portion of the old Mill Basin on the west side of the Miami and Erie Canal in the city of Delphos, Van Wert County, Ohio, which is more particularly described as follows:

Beginning at a point in the northerly line of Third Street in the city of Delphos, Van Wert County, Ohio, that is one hundred twenty-five and five-tenths (125.5') feet easterly from the westerly line of Canal Street in said city, said point being the south-

easterly corner of a tract of land occupied by the Trustees of Washington Township, Van Wert County, Ohio, and running thence easterly with the northerly line of Third Street, forty-two (42') feet; thence northerly parallel with the westerly line of Canal Street, sixty-five (65') feet; thence westerly at right angles, forty-two (42') feet, to the northeast corner of the tract of land occupied by the Trustees of Washington Township; thence southerly sixty-five (65') feet, to the point of beginning and containing twenty-seven hundred and thirty (2730) square feet.

The lease here under consideration is one executed under the authority of the DeArmond Act, so-called, 114 O. L., 546, providing for the abandonment for canal and hydraulic purposes of that part of the Miami and Erie Canal from the point where said canal joins the Maumee River in Providence Township, Lucas County, Ohio, to a point five hundred feet north of the state dam near the corporation line of the city of Middletown, Butler County, Ohio. The parcel of Miami and Erie Canal land above described is, of course, a part of the canal lands abandoned for canal and hydraulic purposes by this act.

Apparently, the primary purpose of the legislature in abandoning the Miami and Erie Canal for canal and hydraulic purposes was that the canal land so abandoned or such parts thereof as might be suitable and available for the purpose, might be used for highway purposes under the jurisdiction and control of the Director of Highways; and to this end the Director of Highways was authorized and directed to make a survey of said abandoned canal lands for the purpose of determining what part of said lands should be reserved for highway purposes. And in this connection, it is further provided in this act that if the Division of Conservation of the State of Ohio or any city, village or other municipal corporation or any county, township, municipal park board or other political subdivision or taxing district of the State desires to lease any portion of said canal lands not desired for highway purposes, such parties may make application, within two years from the effective date of the act for the lease of such canal lands for public park purposes.

It does not appear from this lease or from any recital therein contained what, if any, affirmative acts have been taken by the Director of Highways as to the reservation of the above described or other parcels of said Miami and Erie Canal lands, other than as may be inferred from an entry made by the Director of Highways under date of December 23, 1938, finding that the above described parcel of land covered by this lease will not be needed for future highway development and releasing the same to the Director of Public Works for his disposition as provided by law.

In this situation and assuming, as I do, that no application was made for the lease of this parcel of canal land or of any part of the same for park purposes by any municipal corporation or other political subdivision,

it follows that you are authorized to execute this lease under Section 19 of said act which provides as follows:

“At the end of two years from the date at which this act becomes effective, any portion of said abandoned Miami and Erie canal that has not been designated by the director of highways as necessary for state highway improvements under the terms of this act, or has not been leased for public park purposes, to any of the parties herein authorized to make application to lease portions of said abandoned canal for public park purposes, may be appraised by the superintendent of public works at its true value in money, and leased to responsible parties for a term of fifteen years and multiples thereof up to ninety years, or for a term of ninety-nine years renewable forever, subject to the approval of the governor and attorney general, and the annual rental therefor shall be six per cent of the appraised value thereof, as determined by said superintendent of public works.”

This lease has been properly executed by you as Superintendent of Public Works, acting for and on behalf of the State of Ohio, and by Samuel Roberts, the lessee therein named. And since, further, I find that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the act of the legislature above referred to and with other statutory enactments relating to leases of this kind, I am approving this lease as to legality and form as is evidenced by my signature endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.