

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3451.

APPROVAL—LEASE, CANAL LAND, STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, TO CHARLES F. DUFFY, TROY, OHIO, DESCRIBED PARCEL OF ABANDONED MIAMI AND ERIE CANAL LAND, CITY OF TROY, MIAMI COUNTY, OHIO, TO CONSTRUCT, MAINTAIN AND OPERATE AN OIL AND GAS FILLING STATION, ANNUAL RENTAL, \$480.00.

COLUMBUS, OHIO, December 27, 1938.

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

DEAR SIR: On or about October 8, 1938, you submitted to me for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works to one Charles F. Duffy of Troy, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$480.00, there was and is leased and demised to said Charles F. Duffy the right to construct, maintain and operate an oil and gas filling station upon a parcel of abandoned Miami and Erie Canal land in the City of Troy, Miami County, Ohio, which is further described as commencing at a point in the easterly line of Market Street in said city that is one hundred (100') feet southwest of the southeast corner of Canal and Market Streets, measured along the southeasterly line of Market Street; thence southwesterly along the easterly line of Market Street, seventy-three (73') feet, more or less, to the northwest corner of a tract of state land now under lease to one Warren J. Pearson; thence southeasterly parallel to the southerly line of Canal Street and one hundred seventy-three (173') feet southerly therefrom, one hundred twenty (120') feet; thence northerly, at right angles, seventy-three (73') feet; thence northwesterly one hundred twenty (120') feet, to the place of beginning and containing eight thousand, seven hundred and sixty (8,760) square feet, more or less. This lease is one executed

by you under general authority conferred upon you by Sections 13965 and 464, General Code, relating to the lease of canal lands, and under the more particular authority of Section 19 of the DeArmond Act, so-called which was enacted by the Eighty-ninty General Assembly under date of April 29, 1931, 114 O. L., 546, 552.

This lease, when the same was presented to this office for approval, was in the form of a bilateral contract; that is, the lease had been signed and otherwise executed by you as Superintendent of Public Work for and in the name of the State of Ohio and by said Charles F. Duffy as lessee. Inasmuch as you were clearly authorized to execute this lease under the statutory provisions above noted and since the terms and provisions of the lease were in compliance with the above noted statutory provisions and other statutes relating to leases of this kind, and the lease and its terms and provisions were accepted by Charles F. Duffy by his signature on the lease instrument, this lease so executed required only the approval of the Governor and the Attorney General to make this lease and its terms and provisions a valid and subsisting contract by and between the State of Ohio and Charles F. Duffy. This lease bore the signature of the Governor when the same was submitted for my approval; and, consequently, when my approval was given to this lease, as was evidenced by my approval endorsed upon the lease instrument, as well as by my Opinion No. 3066 directed to you on the date above indicated, this lease instrument thereupon became a valid and subsisting lease covering the above described parcel of canal land for the stated term of fifteen years and under the terms and conditions set out in the lease instrument.

Some time later, to wit, on or about December 15, 1938, you submitted for my examination and approval another lease; one executed by you as Superintendent of Public Works to The Pure Oil Company of Columbus, Ohio. This lease likewise was one for a term of fifteen years and provided for an annual rental of \$480.00. It appeared from this lease instrument as the same was submitted to me that the same covered a parcel of abandoned Miami and Erie Canal lands and that it was executed by you under the identical statutory authority which governed your action in the execution of the lease to Charles F. Duffy, above referred to. There was nothing in the recitals or other provisions of this lease instrument executed to The Pure Oil Company which indicated that the parcel of abandoned Miami and Erie Canal lands therein described was covered by an existing lease; and since I found this lease instrument had been executed in apparent conformity to the statutory provisions relating to the lease of canal lands in this section of the Miami and Erie Canal, the same was approved by me as was evidenced by my approval endorsed upon the lease instrument and by my Opinion No. 3410 directed to you under date of December 15, 1938.

Some days after the approval of this lease to The Pure Oil Company I was advised that the parcel of abandoned Miami and Erie Canal land which was covered by this lease was and is the identical parcel of canal land which was leased and demised by the State of Ohio through you as Superintendent of Public Works to Charles F. Duffy. In this situation, I am required to advise you that the lease executed to Charles F. Duffy was and is a valid and subsisting contract by and between the State of Ohio and said Charles F. Duffy effecting a lease of this parcel of land to Charles F. Duffy as the lessee therein named for a period of fifteen years; and that, consequently, the later lease executed by you to The Pure Oil Company was and is invalid and without legal effect as an instrument for the lease of this property. In this connection, I am further advised that Mr. Duffy's copy of the lease executed to him has never been delivered by you. Although under the facts above stated it does not appear that such delivery was necessary to the legal validity of the lease as a contract between the State of Ohio and Mr. Duffy, he is clearly entitled to a copy of this lease; and I feel it to be my duty to advise you to forward to him a copy of the executed lease.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3452.

INITIATIVE PETITION—PROPOSED AMENDMENT TO SECTION 6064-15 G. C.—PERMIT TO SELL SPIRITUOUS LIQUOR AND WINE—CONSUMPTION OFF PREMISES—DISCOUNT—PURCHASE FROM OHIO DEPARTMENT OF LIQUOR CONTROL.

COLUMBUS, OHIO, December 27, 1938.

MR. WALTER BECKER, 2300 A. I. U. Bldg., Columbus, Ohio.

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing a proposed law and a summary of the same under Section 4785-175, General Code. Copy of said law and a summary of the same are attached hereto.

I am of the opinion that the attached summary is a fair and truthful statement of the proposed law and accordingly submit for uses provided by law the following certification: