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## DISAPPROVAL—CANAL LAND LEASE TO LAND IN VILLAGE OF GRAND RAPIDS, WOOD COUNTY—OHIO-WOOD COUNTY PARK COMMISSION.

COLUMBUS, OHIO, October 8, 1936.

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

DEAR SIR: This is to acknowledge the receipt of a recent communication from you with which you submit 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 to the Wood County Park Commission. By this lease, which is one for a term of ninety-nine years and which provides for an annual rental of \$12.00, there is leased and demised to the lessee above named the right to occupy, improve, maintain and use for park purposes all of that portion of state canal property including the full width of the bed and banks known as The Grand Rapids Side-cut Canal, located in the village of Grand Rapids, Wood County, Ohio, and described as follows:

Beginning at Station 0 plus 00 of said side cut canal survey, said Station 0 plus 00 being the point of intersection of the center line of the State dam across the Maumee River and the transit line of said survey, and running thence easterly with the lines of said Side-cut Canal property, thirty-two hundred and seventy (3270') feet, as measured along said transit line to the junction of said Side-cut Canal with the Maumee River, and containing nine (9) acres, more or less.

Upon examination of the provisions of this lease and of the conditions therein contained, I find that I am unable to approve the lease for the reason that the same does not conform to the requirements of either the DeArmond Act, 114 O. L., 546, 550, or the Farnsworth Act, 114 O. L., 518, 519, relating to the lease of canal lands for park purposes.

By the act first above referred to, which was enacted by the 89th General Assembly and went into effect August 6, 1931, provision is made for the abandonment of an extended portion of the Miami and Erie Canal and for the lease thereof of such part of said canal as is not designated by the Director of Highways for highway purposes. By Section 13 of this act, which has been carried into the General Code as section 14178-39, it is provided:

“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 required for highway purposes, such parties may make application, within two years from the date at which this act becomes effective, to the superintendent of public works of the state of Ohio for a lease thereof, stating the purpose for which such canal land, herein abandoned for canal and hydraulic purposes, is desired, such land or lands may be leased to such party or parties, by said superintendent of public works, for public park purposes only, for a period of fifteen years, or multiples thereof, up to ninety years, or for a term of ninety-nine years, renewable forever.”

By the Farnsworth Act, above referred to, which was likewise enacted by the 89th General Assembly and went into effect on August 6, 1931, it is provided :

“That whenever any village, city, township, county or other taxing district desires to take over any abandoned canal lands for public park or recreational purposes, it may make application in writing by its proper officers, within two years from the date this act becomes effective, to the department or agency of government in control of such abandoned canal lands, stating the purposes for which it is desirous of obtaining possession of such land. The department or agency of government in control of such lands, if it determines that it is in the interest of the state and of the public so to do, may negotiate with such village, city, township, county or other taxing district in respect to the granting of a lease of such land for which application has been made. In determining the annual rental to be paid for a lease of abandoned canal lands, the superintendent of public works shall take into consideration the public use which is to be made of such canal property and fix the annual rental therefor at a nominal sum, but such city, village, township, county or other taxing district of the state shall obligate itself by the terms of the lease granted it, to make substantial improvements thereon to the satisfaction of the superintendent of public works so as to fit the same for public park and recreational purposes, and this shall be a necessary restriction in the granting of such leases. Provided, however, that nothing in this act contained shall apply to canal lands, land and bodies of water now used or hereafter to be used for power, water supply or other industrial purposes.

Tracts of such abandoned canal property not disposed of in the manner herein provided may be leased by the superintendent of public works to responsible parties under the provisions of Section 13965 of the General Code, except the length of the term of such leases may be for ninety-nine years, renewable forever, or for a term of fifteen years, and multiples thereof up to ninety years, and that railroad rights-of-way need not be limited to lengths of two miles; leases granted for a longer term than fifteen years shall contain a clause providing for a reappraisal of the canal lands described in such leases, by proper state authority, at the end of each 15-year period, embraced in such leases and the annual rental therefor shall be six per cent of the appraised value thereof for each period."

Although there is nothing in the terms of the provisions of this lease or in the files submitted therewith to indicate the legal status of the Wood County Park Commission, the lessee named in this instrument, I assume that it is a metropolitan park district created and established under the metropolitan park district law (sections 2976-1, et seq., General Code) and that it is a political subdivision and taxing district under the provisions of said law.

However, it will be noted that in both of the acts of the 89th General Assembly above referred to, relating to the lease of canal lands for park purposes, it is provided that the Superintendent of Public Works in executing leases for this purpose shall take into consideration the public use which is to be made of such canal property and fix the annual rental therefor at a nominal sum. But it is further provided in both of these acts that in such case the lessee shall obligate itself by the terms of the lease granted it, to make substantial improvements thereon so as to fit the property leased for public park or recreational purposes and that "this shall be a necessary restriction in the granting of such leases."

With respect to the lease here in question, it is evident that the annual rental therein provided for is a nominal rental as contemplated in such case by both of the acts of the legislature above noted. However, there is nothing in the provisions of this lease which requires the lessee to make any improvements on the lands covered by the lease for the purpose of fitting such lands for public park and recreational purposes or for any other purposes. And inasmuch as it is a specific requirement of these statutory provisions that a condition of this kind be inserted in a lease of canal lands for park purposes and made a part thereof, I do not feel that I have any discretion other than to disapprove this lease in the form in which it is presented to me. The omission of this provision from the lease was doubtless an oversight on the part of both parties and I assume

that a corrected lease containing this required condition will again be submitted to me for my approval. In this view, it is suggested that some thought be given to the question of the term of the lease. The lease submitted, as above noted, is one for a term of ninety-nine years. You will note from the provisions of both of the acts of the legislature above referred to that there is some question whether the term of the lease can be otherwise than for a term which is a multiple of fifteen years up to ninety years or a term for ninety-nine years *renewable forever*. However, for the reason first above referred to, I am disapproving this lease which, together with the duplicate and triplicate copies thereof, is herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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APPROVAL—LEASE TO LAND IN FAIRFIELD COUNTY, OHIO  
—LOUISE C. LUCHTENBERG, COLUMBUS, OHIO.

COLUMBUS, OHIO, October 8, 1936.

HON. L. WOODDELL, *Commissioner, Conservation Division, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a reservoir land lease in triplicate executed by you as Conservation Commissioner to one Louise C. Luchtenberg of Columbus, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$48.00, payable in semiannual installments of \$24.00 each, there is leased and demised to the lessee above named, the right to occupy and use for cottage site and landing purposes, the inner slope and water front and the outer slope and borrow pit adjacent thereto of the northerly embankment of Buckeye Lake that is included in Lot No. 65 west of the waste-gates at Buckeye Lake, as laid out by the Ohio Canal Commission in 1905, and being part of the northeast quarter of Section 22, Range 18, Town 17, Fairfield County, Ohio, and being the same lease that was originally granted by the State of Ohio, to A. W. Herschey by lease dated May 8, 1906; said lot has a frontage of 100 feet measured along the top of the outer slope of the reservoir embankment.

Upon examination of this lease, I find that the same has been properly executed by you as Conservation Commissioner, acting on behalf of the state of Ohio, and by Louise C. Luchtenberg, the lessee therein