

availability of funds; letter from Auditor of State showing all necessary papers are on file in his office; tabulation of bids; record of proceedings of the Board of Trustees of the Ohio State University and which proceedings record the approval of PWA of the project and of the University Architect.

Finding said contract in proper legal form, I have noted my approval thereon, and same is transmitted to you herewith, together with all papers and documents submitted in this connection.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

643.

MUNICIPAL OFFICERS—VILLAGE COUNCIL—BOARD OF PUBLIC AFFAIRS—MAY CONTRACT WITH LAND OWNER TO FURNISH WATER BEYOND VILLAGE LIMITS—RENTAL, USE OF WATER IN RETURN FOR RIGHT-OF-WAY ACROSS USER'S LAND—EASEMENT—PROVISO—SPECIAL CONTRACT—DIFFERENT RATES OF SERVICE.

SYLLABUS:

Municipal officials may agree, by contract, to furnish water to a user outside the village limits as rental in return for a right-of-way across the user's land, providing said rental does not amount to a special contract requiring different rates or service from that furnished other users.

COLUMBUS, OHIO, May 25, 1939.

HON. LAMOINE HANDLEY, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR: Your recent request for my opinion reads in part as follows:

"The Village of Carrollton heretofore have entered into an Agreement and Lease with a land owner residing outside of the municipality for the purpose, among other things, of obtaining a right-of-way across his premises for the Village water lines. Said agreement was approved and executed by the Village Council and runs for a term of ninety-nine (99) years.

The agreement recites a consideration of One Dollar (\$1.00) which was paid.

The pertinent part of the agreement is as follows:

'As a further consideration for this agreement, it is understood that Second Party will furnish First Party with water for

use at barn on said premises during the term of this Lease and Agreement, not to exceed an amount of 2,500 Cu. Ft. per quarter, said water to be furnished first Party at his property line nearest Second Party's mains as now located.'

Possession was taken under the agreement but no water has been furnished to date to the owner. He is now desirous of using the same.

The question upon which it is desired your opinion is whether or not the Council of the Village of Carrollton, Ohio, and its Board of Public Affairs, legally have the authority to enter into such a contract to furnish a user of water outside of the municipality, for no consideration except that as specified in the agreement, and different from other water users. Also, it is conceded that water being furnished is not surplus water of the Village.

* * * * *

However, under the agreement in question, the Board of Public Affairs of the Village have constructed the water line across these premises of this land owner and are now using the same. Further, the contract was confirmed by the Council, apparently at the request of the Board of Public Affairs."

Section 3939, General Code, reads in part as follows:

"Each municipal corporation in addition to other powers conferred by law shall have power:

(1) To acquire by purchase or condemnation real estate with or without buildings thereon, and easements or interests therein, for any lawful purpose;

* * * * *

(7) To construct or acquire waterworks for supplying water to the corporation and the inhabitants thereof and to extend the waterworks system outside of the corporation limits;

* * * * *

Section 3955, General Code, reads as follows:

"The council of a municipality may take possession of any land obtained for the construction or extension of water works, reservoirs, or the laying down of pipe, and also any water rights or easements connected with the use of water. Any land, water right, or easement so taken possession of for water works purposes shall not be used for any other purpose, except by authority of the director of public service and consent of the council."

From the above quoted sections of the General Code it will be seen

that a municipality may legally acquire and possess an easement for the purpose set forth in your letter.

Having the power to acquire this easement, the question presented is whether or not the municipality may pay for such grant in the manner set forth in your letter.

The municipality has obtained an easement for a right-of-way across land for its water mains. In return for such easement, the municipal authorities have agreed to furnish the owner of the land through which the easement runs water not to exceed 2,500 cubic feet per quarter. It must be conceded that some mode of payment is necessary and if the municipality chooses to furnish a specific amount of water as rental rather than cash or other consideration, that is a matter entirely within the discretion of the municipal officials.

The net effect of furnishing water to the owner of the land rather than paying money seems to be that should the water rate decrease, the owner will receive a correspondingly low rental and if the water rate increased, he will receive a correspondingly higher rental. The value of the water furnished represents the consideration for the easement and as such, the contract here set forth can not be considered as a special contract or an unequal assessment repugnant to Section 3958, General Code, as no provision is made for any exceptional or special rate or service. The prevailing rate for 2,500 cubic feet of water is to be considered as the rental value of the easement here in question.

It is, therefore, my opinion that the contract was legally entered into by the Council of the Village of Carrollton and its Board of Public Affairs and being so, it will be necessary for the village to furnish the water required under said contract.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

644.

PETITION—CERTIFICATION OF SUMMARY—TO REPEAL
HOUSE BILL NO. 336, 93rd GENERAL ASSEMBLY, TO
AMEND SECTION 5276, G. C.—TERM OF OFFICE, GOV-
ERNOR'S MILITARY STAFF—ADJUTANT GENERAL.

COLUMBUS, OHIO, May 25, 1939.

MR. F. M. KIRWIN, *Executive Secretary, Ohio Non-Partisan Defense League, 500 Hartman Theatre Bldg., Columbus, Ohio.*

DEAR SIR: You have submitted for my examination a written petition bearing over one hundred names, containing a certified copy of