

as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work and shall decide all questions which may arise as to the interpretation of the plans and specifications, and all questions as to the acceptable fulfillment of the contract on the part of the contractor, and as to compensation. His decisions shall be final and he shall have executive authority to enforce and make effective such decisions and orders as the contractor fails promptly to carry out."

I am of the view, therefore, that the price of 47c for the entire yardage used should be paid only in the event the required minimum tonnage is used.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1605.

LEASE OF SUBAQUEOUS LANDS IN MAUMEE BAY BY STATE MAY
BE EFFECTED ONLY BY LEGISLATIVE ACT GRANTING SUCH
AUTHORITY.

SYLLABUS:

Although the State of Ohio, consistent with the trust in and upon which it owns and holds the title to the subaqueous lands in Maumee Bay, may lease such lands for a limited term for the purpose of assisting in the construction of an improvement in the Bay which will facilitate navigation and commerce on the waters of the Bay and of Lake Erie, such lease can be effected only pursuant to the authority of an act of the legislature to be enacted for this purpose and in the manner therein designated.

COLUMBUS, OHIO, September 23, 1933.

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

DEAR SIR:—This is to acknowledge receipt of a recent communication from you in which you request my opinion on a question suggested in a letter directed to you by one William H. Gould who, it appears, is an agent of your Department at Toledo, and who for sometime last past has been considering from an engineering standpoint a project for dredging Maumee Bay off the shore at Harbor View, east of the city of Toledo, Ohio.

From the letter of your agent in this matter, a copy of which you enclose, it appears that the projected improvement is the dredging of the bay at this point for the purpose of constructing therein a mooring basin for the accommodation of the ships of transportation lines which may have occasion to use this basin in connection with their navigation of the Bay and the Great Lakes. It further appears that this projected improvement is to be carried out by said transportation lines and by certain persons and incorporations who are the owners of the uplands at this point, and that the improvement is to be made by and through the agency of a corporation to be incorporated for this purpose. The cooperation of the state in this matter is desired and to this end the state is requested

to lease to the corporation to be formed for the purpose above stated, the subaqueous lands in the Bay at this point which, it seems, have been formed by erosion of the shore line during the many years which have elapsed since the original survey of the shore line of the Bay at this point.

The question suggested in the letter of your agent to you and which you have submitted for my opinion is whether the state can participate in the project as outlined in the letter of the agent, and to this end lease to the corporation to be organized for this purpose the subaqueous lands of the Bay as suggested and requested in said letter.

In consideration of the question here presented, it is to be observed that the title to all lands lying under the waters of Lake Erie and the open bays thereof, is vested in the state of Ohio in trust for the people for the purpose of navigation and commerce. This is likewise true of the subaqueous lands of the lake and of the open bays connected therewith which have been formed by the erosive action of the waters in and upon the shore line. And, although consistent with this trust the state cannot by deed lease or otherwise surrender or alienate its title to these lands so as to prevent their use for the primary purposes for which they are held by the state, I see no reason why in keeping with this trust and consistent therewith the state may not for a limited time and upon proper terms effect a lease of its interests in these lands where the purpose to be served thereby is to make possible the construction of an improvement which will facilitate navigation and commerce, which is the primary purpose for which these lands are held. However, the only way in which a lease of this kind can be executed is by authority of an act of the legislature to be enacted for this purpose and through the agency of such officers of the state as the legislature may designate for the purpose of effecting the manual execution of the lease. No legislation conferring the requisite authority for the execution of a lease of this kind has yet been enacted.

In this connection, it is to be observed that although the state holds the title to the lands and waters of Lake Erie and the bays thereof in trust for the purposes above stated, neither said lands nor waters constitute any part of the public works of the state, as such public works have been described in and by the provisions of sections 411, 412 and other related sections of the General Code of Ohio. Speaking generally, it may be said that property constituting the public works of this state is owned by the state outright and by full fee simple title. By acts of the legislature passed from time to time, the Superintendent of Public Works is authorized to lease canal lands which have been abandoned for canal purposes. No statute has been enacted, however, authorizing the Superintendent of Public Works or any other office to effect a lease of the subaqueous lands of Lake Erie and its bays as a part of the public works of the state, or otherwise.

I am therefore of the opinion, by way of categorical answer to the question here presented, that the state may lease the subaqueous lands held by it in Maumee Bay for the purpose suggested in the letter of your agent to you, but that such lease can be effected only pursuant to the authority of an act of the legislature to be enacted for this purpose and in the manner therein designated.

Respectfully,

JOHN W. BRICKER,
Attorney General.