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CANAL LANDS—HOCKING CANAL—MARGINAL TRACTS,
NELSONVILLE, ATHENS COUNTY—OWNED BY STATE OF
OHIO—MAY BE SOLD BY SUPERINTENDENT OF PUBLIC
WORKS—SECTIONS 13965, 13966, 13970, 13971, G. C.

Columbus, Ohio, November 17, 1945

Hon. Frank L. Raschig, Director, Department of Public Works
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“We have before us an informal application to sell lands in the city of Nelsonville, Ohio. From a careful study of the matter, we are certain that this land is not now needed nor can it be reasonably assumed that it will be of any benefit or interest to the State.

The Eighty-ninth General Assembly enacted S. B. No. 214 (Sections 14152-10 to 14152-101, both inclusive, of the General Code). The purpose and intent of this legislation was to authorize the construction of U. S. Route 33 over the then existing canal lands. The remaining property is of no value or benefit to the State.

Shortly after the enactment of this Senate bill, the City of Nelsonville, by councilmanic action renounced any rights conferred upon them by this legislation. (A copy of the Ordinance is attached hereto.) Since that time all proceedings of sales and leases have been completed solely by this department.

Our query is: In view of the fact that all provisions of the act have been complied with, and the City of Nelsonville having no interest therein, are we bound to follow the provisions of Section 14152-101 pertaining to the sale of lands to abutting lot owners and may we consider this Senate bill as having been repealed by act of the City of Nelsonville and may we proceed to sell lands under the provisions of Section 13971 of the General Code by private sale. The value of the land is such that it will be below the limits for private sale as set forth in Section 13971.”

The latest enactment of the General Assembly regarding the disposition of the lands embraced within the lines of the Hocking Canal in the City of Nelsonville is Senate Bill No. 214 of the Eighty-ninth General Assembly, enacted in the year 1931 (114 O. L. 554). Said act is now codified as Sections 14152-10 to 14152-10n, inclusive, General Code.

Said act, after reciting in Section 1 thereof (Section 14152-10, General Code), that the portion of the Hocking Canal situated within the corporate limits of the City of Nelsonville "be, and the same is hereby vacated and abandoned for canal purposes", contains in Section 2 (Section 14152-10a, General Code) a description of such canal lands and grants to the City of Nelsonville the authority and permission to enter upon and occupy the same for municipal purposes, in the following language:

"That there is hereby granted to said city of Nelsonville the authority and permission to enter upon, improve and occupy forever, for street, sewerage, drainage and other municipal purposes, that portion of the said Hocking canal property situated within the corporate limits of said city that is described as follows:"

The act then provides in Sections 3, 4, 5, 6 and 7 thereof (Sections 14152-10b, 14152-10c, 14152-10d, 14152-10e and 14152-10f, General Code), as follows:

Section 14152-10b, General Code:

"The said city of Nelsonville shall, within one year from the date at which this act becomes effective, locate and define by an accurate survey and monument the boundaries of a street or highway, not less than 60 feet in width over the canal property herein described, and shall also lay out the marginal strips on each side of said street or highway, into lots corresponding to the widths of the adjacent lots or tracts, and the mayor of said city shall, within three months from date of the completion of said surveys, file with the superintendent of the public works of Ohio, certified copies of plats or blue-prints thereof, which shall show the alignment of the proposed street or highway and give the serial numbers of the lots laid out on each side of such street or highway."

Section 14152-10c, General Code:

"At any time within two years from the date of the approval of this act by the governor, the said city of Nelsonville, by its mayor, duly authorized thereto by a resolution of its city council,

may make an application to the governor requesting the appointment of a commission to appraise the adjacent marginal tracts, and also other abandoned canal lands that are not to be improved for street or highway purposes, and within sixty days after the receipt of such application, the governor shall appoint an appraisal board of three members, one of whom shall be the superintendent of the public works of Ohio, to appraise each and every marginal tract of land laid out by said city adjacent to the proposed street or highway, and likewise any portions of said abandoned canal lands that are not to be improved for street or highway purposes, and the board of appraisers thus appointed shall proceed within thirty days after such appointment, to organize for business by taking an oath of office, and electing one of its members to act as president, another as vice-president and the third member to act as secretary of said appraisal board, and the appraisal board thus constituted shall proceed to complete such appraisal as rapidly as convenient, but within six months from the date of the organization of the board for business."

Section 14152-10d, General Code:

"As soon as such appraisalment has been completed, the appraisal board shall file with the governor a report, with a plat of said canal lands, listing each and every tract included in such appraisal with the appraised value thereof, and shall likewise file with the mayor of Nelsonville and the superintendent of the public works of the state of Ohio certified copies of such appraisements with plats showing the location and serial numbers of said marginal tracts."

Section 14152-10e, General Code:

"The owners of the abutting lots or lands shall have the first option of purchasing the marginal tracts adjacent to their own property at the appraised value thereof, as shown by the schedule of appraisements filed with the governor. If, however, parties are in actual possession of portions of said abandoned Hocking canal that will not be used for street or highway purposes, such parties shall have the first option of purchasing such portions of the canal property as their actual necessities may require as may be mutually agreed upon between such occupant or occupants and the mayor of said city and the superintendent of public works."

Section 14152-10f, General Code:

"Within thirty days after the receipt of the certified copy of the lists of appraisements of said abandoned canal property, as furnished by said board of appraisers, the mayor shall cause

notices to be mailed to each owner of abutting lands, and also shall cause advertisements to be inserted in two newspapers of opposite politics and of general circulation in Athens county and in the city of Nelsonville, Ohio, for four consecutive weeks, advising the owners of abutting lots and lands that they will have the first option to purchase the same at the appraised value thereof, providing application to purchase the same is filed, either with the mayor of said city of Nelsonville, or the superintendent of the public works of Ohio, within six months from the date of the filing of said schedule of appraisements with the governor: when the applications are taken by the mayor, he shall immediately transmit the same to the superintendent of public works who shall recommend to the governor and attorney general that such tracts be sold, at private sale, to the owners of the adjacent tracts or lands at the appraised value thereof; one-half of said purchase price shall be paid to the state of Ohio and the remainder paid to said city of Nelsonville, and when the purchase price thereof has been paid in full, the governor, after being advised of such payments, shall execute deeds to the purchasers thereof, on behalf of the state of Ohio, conveying the fee simple title thereto to said purchasers."

With respect to the above quoted provisions, I have been advised by you that the City of Nelsonville has not, in accordance with the optional terms of Section 14152-10e, General Code, made application to the Governor for the appointment of a commission to appraise the marginal tracts, nor have such marginal tracts been appraised and lists of appraisement mailed to abutting owners as outlined in Section 14152-10f, General Code. Therefore, the designated officials of the City of Nelsonville not having exercised, on behalf of said city and the owners of lands abutting on such marginal tracts or the parties in actual possession thereof, the rights given to it and to them under the act, it would follow that the owners of such abutting lands and the parties in actual possession of such marginal tracts would not acquire the first option of purchasing such marginal tracts. In other words, the General Assembly, when it enacted the above sections, granted to the City of Nelsonville the right to occupy all of the canal property located within said city, including such marginal tracts, and then provided that if said city chose to have such marginal tracts appraised and sold in accordance with the provisions of the act it could, by action of its council and mayor, do so; and that only after having done so would any rights with respect to the purchase thereof accrue to the abutting owners or persons in actual possession.

It will be noted that neither of the above sections in terms provides for the sale of such marginal tracts to other than the owners of land abutting on such tracts and parties in actual possession thereof. In fact, nowhere else in the act is language found which expressly provides for the sale of such tracts to parties other than such owners or possessors. Therefore, since the right of such latter parties to purchase such tracts did not accrue by reason of the fact that the City of Nelsonville failed to make application for appraisal and otherwise follow the procedure set out in the act, and inasmuch as the act does not specifically provide for the sale of such tracts to other parties, it would appear that in order to effectuate any sale of such tracts authority therefor must be found elsewhere in the law.

In this regard, your attention is directed to Sections 14152-3 and 14152-3a of the General Code, which were enacted in 1929 (113 O. L. 521). Said sections read:

Section 14152-3, General Code:

"That the superintendent of public works of Ohio, as director thereof, subject to the approval of the governor and attorney general, be and he is hereby authorized to lease or sell, as he may deem for the best interests of the state, in strict conformity with the provisions of Sections 13965, 13966, 13970 and 13971 of the General Code, relating to the selling or leasing of canal lands, those portions of the abandoned Hocking canal lands in Fairfield, Hocking and Athens counties, Ohio, that are still owned by the state of Ohio; if leases are granted, they shall be for a term of not less than fifteen (15) nor more than twenty-five (25) years, and the bed and banks of said abandoned canal property may be included in any lease of such canal lands."

Section 14152-3a, General Code:

"There is hereby excepted and reserved from the provisions of this act any portion of said abandoned Hocking canal that is now occupied by state highways, or that may be designated, within one year from the date at which this act becomes effective by the director of highways as necessary in any scheme of highway improvement adjacent to said abandoned canal lands."

Since that portion of the Hocking Canal situated within the corporate limits of the City of Nelsonville is embraced within the canal lands of Athens County, authority for the sale of such portion, when and if abandoned and still owned by the State of Ohio, is contained in the above sections.

The portion of the Hocking Canal lying within the City of Nelsonville was, as pointed out above, vacated and abandoned by the Act of 1931 (Section 14152-10, General Code). It would consequently follow that if any of the lands within the line of that part of the canal so abandoned, excepting such as are occupied by state highways, could, under the express terms of the above section, if now owned by the state, be sold or leased by the Superintendent of Public Works as he may deem for the best interests of the state.

The remaining question, then, is whether the marginal tracts in question are now owned by the state. As above stated, the City of Nelsonville was granted the right to enter upon and occupy forever that portion of the canal property situated within the corporate limits of said city. Such right of occupancy was given by the General Assembly in the year 1931 under Section 14152-10a, supra. However, since said date and since the lapse of the time during which the owners of lands abutting on the marginal tracts or the persons in actual possession of such tracts might have exercised any rights with respect to the purchase thereof, had the city made the application for appraisal prescribed by Section 14152-10c, General Code, and otherwise followed the optional procedure outlined therein, the council of the City of Nelsonville has, as stated in your letter, renounced all rights in and to such lands granted to said city by the General Assembly in Section 14152-10a, General Code.

Under the terms of Ordinance No. 972, passed by the council of the City of Nelsonville on July 7, 1943, the mayor and other proper officers of said city were authorized and directed to execute and deliver to the State of Ohio a proper and sufficient deed, releasing and quitclaiming to the State of Ohio any and all right, title, claim and interest of the City of Nelsonville in all marginal tracts in said Hocking canal lands lying within the corporate limits of said city. Pursuant to said authority and in accordance therewith, a quitclaim deed was executed and delivered. Said deed, which is now of record in the deed records of Athens County (Deed Book No. 181, page 500), reads as follows:

“WHEREAS, on the 7th day of July, 1943, the Council of the city of Nelsonville, Ohio, passed a certain ordinance, two-thirds of all members elected thereto concurring, authorizing remise, release and quit claim of the real estate hereinafter described:

NOW, THEREFORE, the said City of Nelsonville, of the state of Ohio, by Herman Ogg, its Mayor and Earl D. Mender, its Director of Public Service and Public Safety, Grantor, In Consideration of the sum of One Dollar and other good, valuable and sufficient consideration to it paid by the State of Ohio, Grantee, the receipt whereof is hereby acknowledged, does hereby Remise, Release and forever Quit-Claim to the said Grantee, its successors and assigns forever, but reserving all rights of use by the Grantor for streets and avenues, parking, sewerage, water and other public utility purposes, the following real estate, situated in the County of Athens, in the State of Ohio, and in the City of Nelsonville, and bounded and described as follows:

'Being the remaining marginal strips upon and along either side of Canal Street and being all that portion of abandoned Hocking Canal lands situated within the corporate limits of the city of Nelsonville, Ohio, which is not occupied by the existing street improvements constituting an extension of State Highway No. 155, Federal Route No. 33, and known as Canal Street, excepting the portion thereof in the rear of Lot No. 116, any lying between the northerly line of said Canal Street and the northerly line of the abandoned Hocking Canal property, which excepted portion is now needed and occupied by the City for general public purposes.'

To have and to hold said premises, with all the privileges and appurtenances thereunto belonging to the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor, the City of Nelsonville, by its said officers, has hereunto caused to be affixed its name and corporate seal and the names of its said officers and the attestation of the Clerk of said city, this 7th day of July, In the Year of Our Lord, One Thousand Nine Hundred and Forty-three (1943).

Signed and sealed
in presence of:

THE CITY OF NELSONVILLE
By Herman Ogg, Mayor

Attest:

Joseph A. Stedem,
Clerk.

John P. Kelso
G. Nelson

By Earl D. Mender, Director
of Public Service and
Public Safety.

The State of Ohio Athens County SS.
 Be it Remembered that on this 7th day of July, A. D. 1943, before me, the subscriber, a Notary Public in and for said county, personally came the above named Herman Ogg, Mayor of the City of Nelsonville, State of Ohio, and Earl D. Mender, Director of Public Service and Public Safety and severally acknowledged the execution of the foregoing deed to be their voluntary act on behalf of the city and the corporate act and deed of said city. Also came Joseph Stedem, Clerk of said city, and acknowledged the attestation in the foregoing Deed, and acknowledged the signing of the same to be his voluntary act and deed, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

(Signed) John P. Kelso
 Notary Public

(Seal)"

In view of the above it would appear, and it is accordingly my opinion, that the marginal tracts in question are now owned by the State of Ohio and any or all of them may be sold by the Superintendent of Public Works in conformity with the provisions of Sections 13965, 13966, 13970 and 13971 of the General Code as he may deem for the best interests of the State of Ohio.

Respectfully,

HUGH S. JENKINS

Attorney General