

New York, N. Y., appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6026.

DISAPPROVAL—LEASE TO CANAL LAND IN AKRON, OHIO
—HUGH M. EATON, AKRON, OHIO.

COLUMBUS, OHIO, August 31, 1936.

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

DEAR SIR: You have submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and Director of said department to one Hugh M. Eaton of Akron, Ohio. By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$1,274.00, there is leased and demised to the lessee above named for business building purposes two certain tracts of Ohio Canal lands in the city of Akron, Ohio, which tracts of land are more particularly described in the lease instrument.

This lease instrument contains the following provision and recital:

“This lease is granted under the provisions of Section 13965, of the General Code, to supersede an existing lease that was granted to the party of the second part herein, under date of June 12th, 1933, as being a renewal of said existing lease dated June 12th, 1933, as owned by said second party hereto, which lease is hereby cancelled, subject to the approval of the Governor and Attorney General of this lease.”

Inasmuch as the parcels of land covered by this proposed new lease are now held by the lessee therein named under an existing lease executed

by the Superintendent of Public Works and approved by the Governor and the Attorney General under date of June 12, 1933, which existing lease will not expire of its own limitation until June 12, 1948, there is obviously no authority for the execution of the proposed new lease other than the provisions of section 13965, General Code, referred to in this lease instrument. In an opinion directed to the then Superintendent of Public Works under date of March 1, 1915, the Attorney General held that the Superintendent of Public Works had no authority to cancel an existing lease of state lands or accept a surrender of the same, merely in order that a new lease might be entered into between the Superintendent of Public Works and the original lessee. Following this opinion of the Attorney General, the legislature by an act passed under date of May 14, 1915, amended section 13965, General Code, so as to provide, among other things, as follows:

“Any owner of an existing lease for state canal lands may surrender the same to the state in order to have the land described therein included in a new lease, which shall not be for a greater term than fifteen years, and the application therefor shall definitely set forth the reasons why an extension of the lease is desired, but before granting a new lease for such state canal land, the superintendent of public works must be satisfied that the extension of the lease is for the purpose of making a valuable improvement thereon, which the lessee could not otherwise afford to make for the remaining portion of the unexpired lease. When a new lease, which shall not be for a less rental than the original lease, has been granted and approved by the governor and attorney general, the superintendent of public works shall cancel the original lease.”

It will be noted from the above quoted provisions of section 13965, General Code, that before the Superintendent of Public Works is authorized to grant a new lease of canal lands which are covered by an existing lease, such official must be satisfied that the extension effected by the new lease is for the purpose of enabling the lessee to make a valuable improvement on the property, which he could not afford to make for the remaining portion of the unexpired lease held by such lessee. The proposed new lease here in question recites that the lessee therein named “has declared his intention of making improvements thereon that he cannot afford to make for the unexpired portion of his lease.” This recital contained in the new lease falls far short of the requirement of the statute that before such new lease is executed the Superintendent of Public Works must be satisfied that the execution of the new lease is

necessary for the purpose of enabling the lessee to make a valuable improvement upon the property. I do not know how the Superintendent of Public Works can evidence the fact that he is satisfied that the execution of the new lease is for the purpose of enabling the lessee to make a valuable improvement upon the property and that such valuable improvement will be so made, otherwise than by some finding to this effect made by the Superintendent of Public Works. And it is suggested that the new lease be corrected by incorporating therein by way of recital a finding of the Superintendent of Public Works giving effect to the requirement of the statutory provision above noted.

It is noted that you have written into the printed part of this lease which prohibits the sale of spirituous or intoxicating drinks on the premises covered by the lease, a provision which has the effect of permitting the lessee to sell or to allow to be sold on the premises spirituous or intoxicating drinks if the same are not "of a greater alcoholic content than is allowed by law." It is suggested that this provision limiting the right of the lessee or his sublessees to sell intoxicating liquors on the premises to the sale of such as do not have a greater alcoholic content than allowed by law, will give very little protection to the state of Ohio as the owner of this property or to the public generally with respect to the manner in which the sale of intoxicating liquor may be conducted on the leased premises. In this connection, it is noted that section 6211, General Code, provides that all contracts whereby any building or premises are rented, leased, used or occupied shall become void when such building or premises are used in whole or in part, for the sale of intoxicating liquors contrary to law, and that the lessor, on and after the selling or giving away of intoxicating liquors contrary to law shall be held to be in possession of such building or premises. Inasmuch as it is a general principle observed in the construction of general statutes that the provisions of the same do not apply to the state unless the statute in terms makes them applicable to transactions of the state itself, there may be some question as to the application of the provisions of section 6211, General Code, to this lease. In this view, it is further suggested that if it is the desire of the Superintendent of Public Works to permit the sale of spirituous or intoxicating liquors on the premises, it be provided therein that sales of such spirituous or intoxicating liquors, whether the same be made by the lessee or by his sublessees, be made in strict conformity with the laws of the state of Ohio and of the ordinances of the city of Akron and that further provision be made in the lease following the language of section 6211, General Code, providing for the forfeiture of the lease in the case of the sale of intoxicating liquors on the premises contrary to law.

For the reasons above noted, I am herewith returning this lease

without my approval endorsed thereon with the expectation that the same will be corrected in the manner above indicated and will then be again submitted to me for approval.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6027.

APPROVAL—BONDS OF SPRINGFIELD RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$18,000.00.

COLUMBUS, OHIO, September 1, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

6028.

APPROVAL—BONDS OF AKRON CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$18,000.00.

COLUMBUS, OHIO, September 1, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

6029.

BOARD OF EDUCATION—CONDITIONS UNDER WHICH FREE TEXT BOOKS MUST BE FURNISHED.

SYLLABUS:

1. *The present statutes grant authority to boards of education to furnish textbooks free of charge for pupils in attendance in the public schools, but the duty to furnish such books is not mandatory except as to those pupils whose parents or guardians upon satisfactory proof to the board, are unable to furnish such textbooks, for grades and types of schools other than the elementary grades until after the expiration of the school year 1936-1937.*

2. *The duty to furnish free textbooks for pupils in grades 1-4, inclusive, was mandatory during the school year 1935-1936, and is manda-*