

2742.

DISAPPROVAL, LEASE TO STATE RESERVOIR LAND AT INDIAN LAKE
FOR LAWN AND PARK PURPOSES—J. R. BEATLEY.

COLUMBUS, OHIO, December 30, 1930.

HON. PERRY L. GREEN, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a recent communication from your office submitting for my examination and approval a certain reservoir land lease executed by the Conservation Commissioner by which there is leased to one J. R. Beatley of Russell's Point, Ohio, for a term of fifteen years, the right to use and occupy for lawn and park purposes a certain parcel of state reservoir lands at Indian Lake, which parcel is more particularly described as follows:

"Being an island in Indian Lake which lies immediately northerly of Lots Nos. 15 and 50 of the Burkhardt Subdivision of land at Russell's Point, Ohio; said island containing two (2) acres, more or less, and being part of the east half of Section 36, Town 6 South, Range 8 East, Logan County, Ohio."

By said lease there is also granted to the lessee therein named permission to construct a bridge from the island to the mainland at a point approximately one hundred (100) feet easterly from the easterly line of Lot No. 15, of Burkhardt's Subdivision extended.

The provisions in said lease with respect to the rental to be paid by said lessee for the use of the premises covered by said lease are as follows:

"As a consideration for the privileges herein granted, the party of the second part hereto, for himself, his heirs, executors, administrators, successors and assigns, hereby agrees to pay to the party of the first part an annual rental of one hundred (\$100.00) dollars for the first five years, and for each year of the second five year period an annual rental of two hundred (\$200.00) dollars, and for each year thereafter an annual rental of three hundred (\$300.00) dollars during the continuance of the lease up to the date of expiration, payments to be made semi-annually for one-half the yearly rental in advance on the first day of May and November of each year."

The only question touching the validity of said lease arising on a consideration of the provisions thereof, is that suggested by the above quoted provisions with respect to the rental to be paid by said lessee during the term of the lease. From the provisions above quoted, it is noted that during the first five years of the lease the annual rental to be paid is \$100.00, while the annual rental to be paid during the second five year period of said lease is \$200.00 and the annual rental for the remaining five year period of the lease is \$300.00.

It appears from the lease that the appraised valuation of the property leased is \$3,333.34 and that an annual rental of 6% on this appraised value amounts to the sum of \$200.00. From the provisions of the lease with respect to the rental to be paid by said lessee, it appears that the average rental to be paid by him during the fifteen year term of said lease is the sum of \$200.00 annually but that this sum of money is required to be paid annually only during the second five year period of the lease, the amount to be paid annually during the first five years of the lease being \$100.00 less than this amount, and the amount to be paid annually during the third five year period of the lease being \$100.00 more than said amount of \$200.00, which is the average rental paid during the term of fifteen years.

Obviously the question here presented is whether or not there is any legal authority for provisions in the lease which do not call for an annual payment of 6% of the appraised value of the property leased during each and every year of the term of said lease. Section 471, General Code, as amended in the enactment of the Conservancy Act, 113 O. L. 553, provides as follows:

"No state lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake or Portage Lakes shall ever be sold but the conservation commissioner may lease such lands, including marginal strips and marsh lands around said lakes, the outer slopes of artificial embankments, islands, borrow pits and state lands adjacent thereto as he deems proper under the laws governing the leasing of canal lands."

It will be noted from the provisions of this section that the Conservation Commissioner is authorized to lease lands in and adjacent to Indian Lake and the other lakes therein mentioned "under the laws governing the leasing of canal lands." The power and authority now exercised by the Conservation Commissioner with respect to the leasing of state reservoir lands in and adjacent to Indian Lake and the other lakes mentioned in Section 471, General Code, were previously exercised by the Superintendent of Public Works, and before that by the Canal Commission of Ohio and by the Board of Public Works. In all the statutory provisions relating to the power and authority of such officers, commissions and boards to execute such leases, it was required that such leases should be executed under the laws governing the leasing of canal lands.

The first statutory provisions with respect to the leasing of canal lands independently of the lease of such lands for hydraulic purposes merely as an incident to the lease of water power are those which as amended from time to time are now found in the General Code (appendix) as Sections 13965, et seq. By these statutory enactments provision was and is now made for leasing such canal lands for a term of fifteen years, "at an annual rental of six per cent per annum of said valuation, to be paid semi-annually in advance". Acts have been passed by the Legislature from time to time abandoning various sections of the canals of this state, and providing for the lease of the canal lands so abandoned for varying terms, but in every instance it is provided that the rental to be paid for the lease of such canal lands shall be 6% of the appraised value of the property leased, unless, as is provided in some of the acts, the lessee is a municipal corporation or other political subdivision of the state, in which case the rental to be paid is usually fixed at 4%. In such abandonment acts where the authorized term of the lease of canal lands thereby abandoned is more than fifteen years and some multiple of this figure, the uniform provision is that the annual rental shall be 6% of the appraised value of the property during the first fifteen years of the term of the lease subject to reappraisal at the beginning of each subsequent period of fifteen years during the term of the lease.

I am inclined to the view that the Legislature in the enactment of Section 471, General Code, and of earlier statutory provisions relating to the lease of state reservoir lands, had reference to the provisions of Sections 13965, et seq., in providing that such leases should be under the laws governing the leasing of canal lands. It is therefore required by the provisions of Section 471, General Code, under the authority of which the lease here in question was executed, that reservoir land leases should provide for an annual rental of 6% per annum on the valuation of the property leased, such annual rental to be paid semi-annually in advance. The word "annually" as used in this connection means, not only that the state is to receive from the lessee an amount equal to 6% upon the value of the property and privilege leased for each year, but that this sum of money is to be paid to the state each year during the term

of the lease. See *Mower vs. Sanford*, 76 Conn. 504, 63 L. R. A. 625. The fact that under the provisions of the lease here in question the lessee is required to pay an amount of rental, which considering the whole of the term of said lease averages the sum of \$200.00 annually, which is 6% upon the appraised value of the property leased, does not meet the requirement of the statute in its application to the lease here in question that said sum of \$200.00 should be paid to the state each and every year during the term of said lease.

For the reasons above stated, this lease is disapproved and I am herewith returning the same, together with duplicate and triplicate copies thereof, without the indorsement of my approval thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2743.

APPROVAL, BONDS OF CITY OF EAST PALESTINE, COLUMBIANA COUNTY, OHIO—\$30,723.65.

COLUMBUS, OHIO, December 30, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

2744.

APPROVAL, BONDS OF WILLS RURAL SCHOOL DISTRICT, GUERNSEY COUNTY, OHIO—\$45,000.00.

COLUMBUS, OHIO, December 30, 1930.

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

2745.

DISAPPROVAL, BONDS OF CITY OF EAST PALESTINE, COLUMBIANA COUNTY, OHIO—\$13,000.00.

COLUMBUS, OHIO, December 30, 1930.

Re: Bonds of City of East Palestine, Columbiana County, Ohio, \$13,000.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The transcript relative to the above issue of bonds discloses that these bonds were authorized by ordinance passed August 4, 1930, to mature on the first day of October of the years 1932 to 1936, both inclusive. After having been