

4667.

## APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, September 30, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4668.

## APPROVAL, LEASE TO ABANDONED MIAMI AND ERIE CANAL LANDS IN WATERVILLE AND PROVIDENCE TOWNSHIPS, LUCAS COUNTY, OHIO, FOR PUBLIC PARK AND RECREATION PURPOSES—TOLEDO METROPOLITAN PARK BOARD.

COLUMBUS, OHIO, October 4, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval, a certain lease and instrument of writing executed by you, in your official capacity as Director of Highways, to the Toledo Metropolitan Park Board.

By this lease, which is executed by you under the authority of Section 9, of Amended Senate Bill No. 48, executed by the 87th General Assembly April 4, 1927 (112 O. L., 360) as amended by the 89th General Assembly March 31, 1931 (114 O. L., 19) there is leased and demised to the Toledo Metropolitan Park Board, for public park and recreation purposes, three certain parcels of abandoned Miami and Erie Canal lands in Waterville and Providence Townships, Lucas County, Ohio, which will not be required for highway purposes.

Upon examination of this lease, I find that the same has been executed by you, in your official capacity as Director of Highways, and by the lessee above named, in the manner required by law. This lease has not been acknowledged by the Director of Highways, and inasmuch as there is no statute which provides specially for the filing and recording of leases executed by the Director of Highways, as is the case with respect to leases executed by the Superintendent of Public Works (Section 429, General Code) the question is suggested whether this lease is not required to be acknowledged under the general law providing for the execution of leases (Section 8510, General Code).

In this situation it is to be observed that if there were some statutory provision which *required* leases executed by the Director of Highways to be recorded of the county where the property is situated, the lease would not be valid without acknowledgment by the lessor for the reason that in such case the lease without such acknowledgment would not be entitled to record. *Atkinson vs. Dailey*, 2 Ohio, 213. However, there is no statute which requires this lease to be recorded; and the only question remaining for determination is whether the general provisions of Section 8510, General Code, relating to the execution and acknowledgment of leases applies to a lease of this kind. It is a general principle applicable in the construction of statutory provisions that the same do not apply to the state

unless it be expressly so enacted. *State of Ohio ex rel. vs. Board of Public Works*, 36 O. S., 409. More immediately touching the question at hand, the Supreme Court of this state, in the case of *Emmitt vs. Lee*, 50 O. S., 662 said:

"There is no statute requiring state officers to acknowledge deeds and other like instruments by them executed in the performance of their official duties and no good reason could be given why a state officer should go before a justice of the peace or notary public and make an acknowledgment to the effect that he has performed his official duties voluntarily."

Giving effect to the rule above stated, I am inclined to the view that the lease here in question is not one which is required to be acknowledged.

On examination of the terms and provisions of the lease and of the conditions and restrictions therein contained, I find the same to be in conformity with the statutory provisions under the authority of which the lease is executed, and in conformity with other statutory provisions relating to the lease of canal lands owned by the state.

This lease is accordingly hereby approved by me as to legality and form and same, together with the duplicate and triplicate copies thereof is herewith returned.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4669.

TOWNSHIP TRUSTEES—MAY ACQUIRE LAND FOR CEMETERY PURPOSES WITHIN 200 YARDS OF DWELLING WITH OWNER'S CONSENT—BINDING ON SUBSEQUENT PURCHASER.

SYLLABUS:

*Township trustees, by virtue of sections 3441 and 3442, General Code, may acquire by purchase grounds for cemetery purposes within two hundred yards of a dwelling from the owner of such dwelling and with the owner's consent to the use of such grounds for such purposes, and any heir of such owner or subsequent purchaser of the dwelling would take title subject to such consent, which consent would be a defense in proceedings to compel the township trustees to cease the use of such plot for cemetery purposes or remove graves placed therein.*

COLUMBUS, OHIO, October 5, 1932.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"In behalf of the Trustees of Blanchard Township, Putnam County, Ohio, will you please render me an opinion on construction of Section 3442 of the General Code of Ohio?"

The Trustees of Blanchard Township are badly in need of additional ground for their cemetery which is used as a burial ground for the majority of the deceased of the Village of Ottawa, Ohio. The best