

suming its validity and in paying out of the rentals of the lands here in question assessments against such lands, to the extent that the same are benefited by improvements for which the assessments are levied.

The answer here given to your first question makes any discussion of the second question presented in your communication unnecessary further than to say that inasmuch as said proposed road improvement is not in and upon the school lands here in question but simply abuts upon the same, you would not be authorized to make any contracts for the construction or improvement of said road under Sections 3194, 3198 or any other section of the statutes relating to the improvement of school and ministerial lands.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2252.

CANAL LANDS—APPROVAL OF SALE BY GOVERNOR AND ATTORNEY
GENERAL—MIAMI AND ERIE CANAL.

SYLLABUS:

Though the sales to abutting property owners and others of parcels of abandoned Miami and Erie canal lands, heretofore held by the city of Cincinnati under lease and by said city relinquished to the State of Ohio under the act of April 20, 1927 (112 O. L. 210), require the written approval of the Governor and the Attorney General, the approval of said officers to such sales may be properly evidenced by written endorsements on the deeds by which conveyances of such parcels of land to the purchasers are effected.

COLUMBUS, OHIO, June 18, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, which is as follows:

“By an act of the 87th General Assembly of Ohio passed April 20th, 1927, and approved by the Governor on the 2nd of May, 1927, the city of Cincinnati was authorized to relinquish to the State of Ohio the surplus portions of the abandoned Miami and Erie Canal which it holds by three (3) separate leases, and which are not required by the city of Cincinnati, nor by the Board of Rapid Transit Commissioners of said city for street, boulevard and sewer purposes.

In compliance with the provisions of this act, the Superintendent of Public Works authorized the Board of Rapid Transit Commissioners to make surveys and plats of these surplus portions of the canal not required for municipal purposes. The plats of this survey show each separate tract and the adjacent private property with the names of the owners of said property.

These surplus tracts were subdivided into some two hundred (200) separate tracts which have been duly appraised by the Superintendent of Public Works, and said appraisements have been agreed to by resolution of the Board of Rapid Transit Commissioners, as provided for in the act authorizing the city of Cincinnati to relinquish the same to the State of Ohio.

The abutting property owners have the first opportunity to take over these tracts of canal land at the appraised value thereof as fixed by the Superintendent of Public Works and approved by the Board of Rapid Transit Commissioners of the city of Cincinnati.

Practically all of the abutting land owners have indicated their desire to purchase the tracts of land abutting their property.

In order to save this department, and likewise your own department, the trouble of going over these tracts several times, following the usual procedure of recommendations to the Governor and yourself, and requesting your approval thereto, Mr. Booton has prepared a form of deed to be used for conveying these tracts to the purchasers.

If a series of resolutions are to be presented to yourself and the Governor for approval, and later deeds prepared for execution, it will require a great deal of clerical work, which we would like to avoid.

If it meets your approval, we would like to have you note your approval of the sale and deed at the bottom of the page under the Governor's signature. It is our intention to have printed forms arranged so that a complete record of the deed will be on file both in this office and in the office of the Auditor of State.

All of the conveyances will be alike except as to the description of the particular tract to be conveyed, so that the approval as to one tract is equivalent to the approval of all of them.

I am enclosing herewith a copy of the appraisements fixed upon each of these tracts, with the descriptions of the same, so that you may see the amount of useless clerical work that will be required if we follow the usual procedure.

These sales, while made under the special act of the General Assembly (O. L. 112, page 210-214) will also be made under the provisions of the General Code, which require the approval of both the Governor and the Attorney General. If in your judgment the approval on the deed is sufficient, we will add this to the form before it is printed.

We would like to have this form approved at the earliest possible date, as the city of Cincinnati is anxious to have the transaction completed as soon as possible."

Your communication relates to certain proposed deeds of the State of Ohio, conveying to abutting property owners or others a large number of small parcels of land, heretofore held under lease by the city of Cincinnati as abandoned Miami and Erie Canal lands, and which have been relinquished by said city to the State of Ohio under authority of an act of the Legislature passed April 20, 1927 (112 O. L. 210). Under the provisions of said act the relinquishment of said lands theretofore held by said city of Cincinnati, under lease as aforesaid, is to be effected by said deeds to the State of Ohio, to be executed by the city of Cincinnati, pursuant to certain preliminary steps provided for in said act. I assume that such deeds have been duly executed, delivered and recorded as required by the provisions of the act above referred to.

Touching the question submitted in your communication, Section 9 of said act provides as follows:

"As soon as such deeds are recorded, the Director of Highways and Superintendent of Public Works of the State of Ohio shall proceed to sell or lease the several tracts thus relinquished, in the manner and upon the

terms hereinafter provided. Within three months after the date on which such deeds are recorded, the owner or owners of land abutting any tract herein authorized to be sold or leased shall have the privilege of purchasing such tract at the value thereof as fixed by said Director of Highways and Superintendent of Public Works and agreed to by the board of rapid transit commissioners of the city of Cincinnati, as hereinabove provided for, or of leasing such tract for the term of ninety-nine years, renewable forever, at an annual net rental at the rate of six per cent of the value of such tracts, as fixed by said Director of Highways and Superintendent of Public Works and agreed to by the board of rapid transit commissioners of the city of Cincinnati, as hereinabove provided for, such rental to be payable in semi-annual installments on the first day of May and November of each year, provided, however, that such lease shall provide for a reappraisal of the value of such tract at the end of each fifteen-year period and a re-adjustment of rental so that the annual net rental shall at all times be at the rate of six per cent of the appraised value of such tract. If the abutting owner or owners of any such tract decline or neglect to purchase or lease such tract within three months after the date on which such deeds are recorded, as hereinabove provided for, the Director of Highways and Superintendent of Public Works of the State of Ohio may sell such tract for the best price obtainable therefor, or lease same perpetually, subject to the approval of the Governor of the State of Ohio and the Attorney General of the State of Ohio, provided, however, that the sale price shall not be less than the appraised value thereof, as fixed by the Director of Highways and Superintendent of Public Works of the State of Ohio and agreed to by the board of rapid transit commissioners of the city of Cincinnati, as hereinabove provided for, and provided that the annual net rental, if leased, shall not be less than six per cent of the appraised value as fixed by the Director of Highways and Superintendent of Public Works of the State of Ohio and agreed to by the board of rapid transit commissioners of the city of Cincinnati, as hereinabove provided for. Provided, further, that all assessments levied by the city of Cincinnati or the board of rapid transit commissioners of the city of Cincinnati for the boulevard improvement, shall be assumed and paid by the purchasers or lessees of such tracts and that no assessments against the several tracts relinquished to the State of Ohio shall be collected from the State of Ohio."

Apparently from the provisions of the section above quoted the only sales of the parcels of land referred to in your communication which are subject to the approval of the Attorney General are those made to persons other than abutting property owners. However, Section 464 of the General Code provides that no land lease, or sale of canal or other state lands, shall be made except upon the written approval of the Governor and the Attorney General. It follows, therefore, that the sales of all of the parcels of land referred to by you require the written approval of the Governor and the Attorney General; and your question has reference to the manner in which the approval of the Attorney General in such cases should be evidenced. Although such sales are subject to the approval of the Attorney General, there is nothing in the provision of said act or elsewhere which requires the approval of such officer to be evidenced by a separate opinion directed to you or any other state officer in each case of a sale of such lands to persons other than abutting property owners, and I see no reason why the approval of the Attorney General to such sales may not be evidenced by proper endorsement upon the deeds of the State of Ohio conveying said parcels of land to the respective purchasers thereof.

With your communication you submit a form of deed to be used in the conveyance by the State of Ohio of the parcels of land referred to in said communication and my opinion is requested with respect to the correctness of said form of deed. An examination of said proposed deed form shows that the same is in all respects correct, except that it is suggested that the same should carry endorsements over lines for the signatures of the Governor and Attorney General, respectively, stating that "the sale of the within described tract of land is hereby approved."

Respectfully,
EDWARD C. TURNER,
Attorney General.

2253.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND BERGEN BROS., MARIETTA, OHIO, FOR THE CONSTRUCTION OF PLUMBING AND HEATING FOR MEMORIAL BUILDING, CAMPUS MARTIUS, MARIETTA, OHIO, AT AN EXPENDITURE OF \$4,127.00—SURETY BOND EXECUTED BY THE MARYLAND CASUALTY COMPANY.

COLUMBUS, OHIO, June 18, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by G. E. Hayward, Willia D. Cotton and B. B. Putnam, duly appointed, acting and qualified members of the Memorial Commission provided for in House Bill No. 506, of the 86th General Assembly, passed March 27, 1925 (111 O. L. 109), and Bergen Bros., Marietta, Ohio. This contract covers the construction and completion of combined plumbing and heating contract for Memorial Building, Campus Martius, Marietta, Ohio, and calls for an expenditure of four thousand one hundred and twenty-seven dollars (\$4,127.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond upon which the Maryland Casualty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, 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,
EDWARD C. TURNER,
Attorney General.