ing the same, together with the other, one contract covering the rental on the above described premises for the aggregate period above noted was incorporated in these several instruments after the lessor executed the same but before they were signed by you as Director of Public Works, this approval is subject to the condition that said provision as it appears in each of these instruments be initialed by the lessor or by an authorized agent or representative of such lessor, so that there will be no question but what both parties to the contract have agreed to its terms as the same are now set out in said several instruments above referred to and considered; and which are herewith enclosed.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3199.

STATUS — RENTAL AGREEMENT, STATE OF OHIO, THROUGH DIRECTOR, DEPARTMENT OF PUBLIC WORKS, WITH THE DACO INVESTMENT COMPANY, FIRST FLOOR SPACE, ROI DAVIS BUILDING, ROOM 121, MICHIGAN STREET, TOLEDO, OHIO, MONTHLY RENTAL, $900.00, USE, OHIO UNEMPLOYMENT COMPENSATION COMMISSION.

COLUMBUS, OHIO, November 8, 1938.

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

DEAR SIR: You have submitted for my examination and approval a so-called rental agreement executed by the Daco Investment Company of Toledo, Ohio, in and by which there is rented to the State of Ohio, acting through you as Director of Public Works under the authority conferred upon you by Section 154-40, General Code, certain office space for the use of the Ohio Unemployment Compensation Commission in the City of Toledo, Lucas County, Ohio, which premises so rented are described as follows:

> First floor space Roi Davis Building, facing on Michigan Street, covering store rooms Nos. 123—145 (inclusive) approximately eighteen thousand (18,000) square feet. It is understood that the store room known as No. 121 Michigan

Street, and containing six hundred and thirty (630) square feet, is not included in this lease.

This rental agreement considered in and of itself covers only the period of time from the 15th day of December, 1938, and from month to month thereafter, and provides for a monthly rental of said premises of $900.00. Accompanying this rental agreement, so-called, is another instrument of even date therewith denominated a lease in and by which the above named lessor leases and demises to the State of Ohio through you in your official capacity as Director of Public Works the premises above described for a period of two years from January 1, 1939, to and including the 31st day of December, 1940; and the rental therein provided for is $10,800.00 a year, payable in quarterly installments of $2700.00 each, which rental, as will be noted, is at the rate of $900.00 per month provided for in the rental agreement first above noted.

In each of these instruments there is a provision that the same, together with the accompanying instrument of even date therewith, shall be considered together as one contract covering the rental to be paid for the above described premises for the period from December 15, 1938, to and including December 31, 1940, as provided for in said several instruments. It was, of course, proper for the parties to make this agreement that these two contracts should be considered as one contract covering the rental to be paid for said premises for the aggregate period of time above indicated; and, obviously, if the provisions of these two instruments were not to be rewritten into one instrument providing for the rental to be paid during said aggregate period, a provision of this kind in each of these instruments was and is necessary. Under the provisions of Section 2288-2, General Code, a contract encumbrance record over the signature of the Director of Finance is necessary with respect to every contract entered into for and on behalf of the State calling for the expenditure of money. And although considering these instruments separately a contract encumbrance record can be made with respect to the rental agreement, socalled, covering the rental to be paid for the period from December 15, 1938, to and including December 31, 1938, the Director of Finance would not be authorized at this time to execute a contract encumbrance record on a contract which did not go into effect until January 1, 1939.

Considering these instruments as one contract, however, no difficulty is encountered in approving the same consistent with the decision of the Supreme Court of this State in the case of *State, ex*

rel Ross, vs. *Donahey,* 93 O. S., 414, and with the principles of law therein announced and applied. As was held by the court in this case a contract of this kind for the payment of rental on premises for the use of a necessary state department, is one for current expenses and is not one creating an indebtedness of the State within the inhibition of the constitutional provision there under consideration; and inasmuch as the obligation of the State with respect to the rental to be paid for these premises for the aggregate period above noted is conditional upon appropriations made or to be made by the legislature for the payment of such rentals or upon the allotment to the Ohio Unemployment Compensation Commission of budget grants by the Federal Social Security Board, this contract, under the authority of the case above cited, is to be deemed a valid contract for the purposes therein provided for.

In this connection, it is noted that there has been submitted with the instruments above referred to a contract encumbrance record covering the rental to be paid on this contract for the period from December 15, 1938, to December 31, 1938, in the amount of $450.00. This is, in my view, a sufficient compliance with the requirements of Section 2288-2, General Code. And viewing these instruments as one contract and not otherwise, the same are hereby approved and returned to you.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3200.

APPROVAL—PROPOSED AGREEMENT BETWEEN STATE OF OHIO, THROUGH DIRECTOR OF HIGHWAYS, WITH THE NEW YORK CENTRAL RAILROAD COMPANY, IMPROVEMENTS, VIADUCT APPROACHES, STATE HIGHWAY NO. 880, MOLINE, WOOD COUNTY, OHIO.

COLUMBUS, OHIO, November 9, 1938.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my consideration and formal approval, as provided by statute, a proposed agreement by and between the State of Ohio, acting by and through John Jaster, Jr., Director of Highways, and The New York Central Railroad Company, providing for the paving and improvement of the approaches of the viaduct over the tracks of said New York Central Railroad on State Highway No. 880