

"Beginning at a line drawn at right angles to the transit line of the G. F. Silliman survey of said canal property through station 4111 plus 00, of said survey, and running thence southerly with the lines of said canal property five hundred and sixty (560') feet, as measured along said transit line to a line drawn at right angles thereto through Station 4116 plus 60, and containing one and fifty-hundredths (1.50) acres, more or less, as shown by the blue print provided by the applicant hereto and to be attached to the lease, with the privileges of filling the bed of said canal with an opening through the fill near the center of the canal, of sufficient capacity to provide ample drainage through the same."

This lease is one executed by you under the authority of an act of the 89th General Assembly, under date of April 29, 1931, and which went into effect on the 5th day of August of that year.

It appears that the Pennsylvania Railroad Company now occupies the above described parcel of canal land for the purpose of their right-of-way crossings. And, in this connection, it is noted that by the provisions of section 8 of said act railroads occupying such abandoned canal lands as a part of their right-of-way across such lands have a prior right to the lease of the canal lands thus occupied and used by them.

It quite clearly appears, therefore, that you are authorized to execute this lease here in question. And, upon examination of the lease, I find that the same has been properly executed by you and by The Pennsylvania Railroad Company, acting by the hand of its Vice President and Secretary, pursuant with the authority conferred upon them by proper resolutions of the Board of Directors of such company. I also find upon examination of the provisions of the lease, and of the conditions and restrictions therein contained, that the same are in conformity with the provisions of this act and other statutory enactments applicable in a consideration of leases of this kind.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease, and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1715.

APPROVAL, LEASE TO CANAL LAND IN VAN WERT COUNTY, FOR THE RIGHT TO OCCUPY AND USE FOR THE PURPOSE OF A GASOLINE FILLING STATION.

COLUMBUS, OHIO, October 10, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain canal land lease in triplicate, executed by you to one Clarence E. Swick of Delphos, Ohio.

By this lease, which is one for a stated term of fifteen years and which

provides for an annual rental of one hundred dollars (\$100.00), payable in semi-annual installments of fifty dollars (\$50.00) each, there is leased and demised to the above named lessee the right to occupy and use for the purpose of a gasoline filling station certain parcels of abandoned Miami and Erie Canal Lands situated in the City of Delphos, Van Wert County, Ohio, and more particularly described as follows:

“TRACT NO. 1. Beginning at the northwest corner of Lot 59 in said city, and running thence northerly with the westerly line of Canal Street sixty (60') feet to the southerly line of Fifth Street, being U. S. Route 30, thence easterly with the southerly line of Fifth Street, ninety (90') feet, more or less, to the foot of the outer slope of the towing-path embankment of the abandoned Miami and Erie Canal, thence southerly parallel with Canal Street sixty (60') feet to the northerly line of Lot No. 59; thence westerly ninety (90') feet, more or less, to the place of beginning and containing fifty-four hundred (5400) square feet, more or less.

TRACT NO. 2. Beginning at the point of intersection of the easterly line of Canal Street and the northerly line of Fifth Street, and running thence northerly with the easterly line of Canal Street, sixty (60') feet to the south line of Lot No. 60; thence easterly with the south line of Lot No. 60, ninety (90') feet, more or less, to the foot of the outer slope of the towing-path embankment; thence southerly sixty (60') feet to the north line of Fifth Street; thence westerly ninety (90') feet, more or less, to the place of beginning and containing fifty-four hundred (5400) square feet, as shown by Plat 85, of S. A. Buchanan's Survey of said canal property through the city of Delphos, said plat being on file at the office of the Department of Public Works, at Columbus, Ohio.”

Although it is not so recited in this lease, I assume that the same has been executed by you under the authority conferred upon you with respect to the lease of abandoned Miami and Erie Canal lands by the so-called DeArmond Act, enacted by the 89th General Assembly, under date of April 29, 1931, and which went into effect on the 5th day of August, 1931. This Act provides that the abandoned portions of said canal, where suitable, shall be used for highway purposes when so designated by the Director of Highways, and that portions of such abandoned canal lands not designated and used for highway purposes may be taken over under lease by any municipal corporation, county, township, municipal park board or other political subdivision desiring to use the same for public park purposes. It is only such portions of said canal lands that are not taken over for highway or public park purposes that are subject to lease for general commercial or other private purposes and then only after an elapse of two years from the effective date of said act. More than two years have elapsed since the effective date of this act and, although it is not so stated by way of recital in the lease or otherwise that the above described parcels of land have not been designated for highway purposes, or that any application for the lease of the same for park purposes has not been filed with you, I assume that this is the fact and that under the provisions of this act you are authorized to lease this property to the above named lessee for the purpose stated in the lease.

Upon examination of the lease, I find that the same has been executed by

you and by the lessee therein named in the manner required by law. I likewise find upon examination of the provisions of this lease, and of the conditions and restrictions therein contained, that the same are in conformity with the act of the 89th General Assembly above referred to. Assuming, as stated above, that these parcels of land have not heretofore been taken over for highway or public park purposes, I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease, and upon the duplicate and triplicate copies thereof.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1716.

APPROVAL, LEASE TO CANAL LAND IN COSHOCTON COUNTY, FOR RIGHT TO OCCUPY AND USE FOR COTTAGE SITE AND AGRICULTURAL PURPOSES.

COLUMBUS, OHIO, October 10, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain canal land lease in triplicate, executed by you to one E. F. Dutoit of New Philadelphia, Ohio.

By this lease, which is one for a term of fifteen years and which provides for an annual rental of nine dollars (\$9.00), there is leased and demised to the lessee above named the right to occupy and use for cottage site and agricultural purposes only, that portion of the abandoned Ohio Canal property, including the full width of the bed and embankments thereof, located in Oxford Township, Coshocton County, Ohio, and more particularly described as follows:

“Beginning at a line drawn at right angles to the transit line of the G. F. Silliman survey through Station 3177, and running thence southwesterly with the lines of said canal property, one hundred (100') feet, to a line drawn at right angles through Station 3178; reserving therefrom any portion of the above described property that may be occupied by the public highway.”

Though you do not so state by recital in the lease or otherwise, the same is executed under the authority conferred upon you by Amended Substitute Senate Bill No. 172, enacted by the 89th General Assembly, and which went into effect on the 5th day of August, 1931, 114 O. L. 541. This act provides for the abandonment for canal purposes of that portion of the Ohio Canal and all lateral canals and canal feeders connected therewith, lying within Tuscarawas, Coshocton and Muskingum Counties, Ohio, and for the lease and sale thereof. Under the provisions of this act, municipalities have a prior right to take over by lease portions of such abandoned canal lands which may be included in their applications therefor filed with the Superintendent of Public Works within one year from the effective date of said act. And, subject to the prior rights of municipalities