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APPROVAL—LEASE OF CANAL LANDS EXECUTED BY THE
STATE OF OHIO TO THE WOOD COUNTY, OHIO PARK
COMMISSION IN GRAND RAPIDS, WOOD COUNTY, OHIO.

COLUMBUS, OHIO, June 2, 1937.

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

DEAR SIR: You have submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said department to the Wood County Park Commission, a body politic and corporate, organized under the provisions of Section 2976-6 of the General Code. By this lease, which is one for a term of ninety-nine years, renewable forever, and which provides for a nominal annual rental of \$12.00, there is leased and demised to the lessee above named the right to occupy, improve, maintain and use for public park and recreational purposes all that portion of Miami and Erie Canal property, including the full width of the bed and banks known as the Grand Rapids Side-cut Canal located in the village of Grand Rapids, Wood County, Ohio, and more particularly described as follows:

Beginning at Station O plus OO of said side cut canal survey, said Station O plus OO being the point of intersection of the center line of the State dam across the Maumee River and the transit line of said survey, and running thence easterly with the lines of said Side-cut Canal property, thirty-two hundred and seventy (3270') feet, as measured along said transit line to the junction of said Side-cut Canal with the Maumee River, and containing nine (9) acres, more or less.

This lease was executed by you in your official capacity above stated under the authority of Section 1 of Amended Substitute Senate Bill No. 69, known as the Farnsworth Act, enacted April 22, 1931, 114 O.L., 518. By this section of said act which has been carried into the General Code as Section 464-1, a prior right was given to any village, city, township, county "or other taxing district" which might desire to lease this or any other abandoned canal lands for public park and recreational purposes provided that application for the lease of the abandoned canal lands desired should be made within two years from the effective date of said act. It does not appear that the applica-

tion for the lease here in question was made by the Wood County Park Commission within the two-year period prescribed in and by said section. In this situation, it is to be observed that although the Wood County Park Commission is without a doubt a taxing district as that term is used in this section, this lease is not one as to which the Wood County Park Commission has any prior rights under this section, but which may be sustained under the general terms of the section which authorizes the Superintendent of Public Works to lease abandoned canal lands which have not heretofore been disposed of under the provisions of this section, to any responsible party. In this connection, I am inclined to the view that all of the provisions of this section may be looked to in determining the validity of the essential terms of the lease. As to this, it is noted that when a lease is executed by the Superintendent of Public Works to any village, city, township, county or other taxing district for public park and recreational purposes the annual rental provided for in such lease may be a nominal amount in view of the public purpose for which the property is to be used by the lessee; but that in such case the lessee is required to obligate itself to make substantial improvements upon the property covered by the lease to fit the same for public park and recreational purposes, and this shall be done to the satisfaction of the Superintendent of Public Works. As to this, it is noted that the lease instrument here in question contains this provision and thus avoids the sole objection upon which a former lease of this property to the lessee above named was disapproved by this office.

Upon examination of this lease, I find that the terms and provisions of the lease and the conditions and restrictions therein contained are in conformity with the act of the legislature above referred to and with other statutory provisions relating to leases of this kind. And inasmuch as I further find upon examination of the lease that the same has been executed by you as Superintendent of Public Works and as Director of said department, acting for and in the name of the State of Ohio, and by the Wood County Park Commission, acting by the hand of its President pursuant to authority conferred upon him for this purpose by the Wood County Park Commission at a meeting held for this purpose, and that in this respect the lease has been executed in the manner provided by law, I am 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 to you.

Respectfully,

HERBERT S. DUFFY,

Attorney General.