

3067

APPROVAL, BOND OF JOHN LAYLIN IN AMOUNT OF \$5,000 WITH NEW AMSTERDAM CASUALTY COMPANY AS SURETY COVERING FAITHFUL PERFORMANCE OF DUTIES AS ENGINEER OF PUBLIC WORKS IN DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS.

COLUMBUS, OHIO, May 6, 1922.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I transmit herewith bond of the State of Ohio in the sum of five thousand dollars, with John Laylin as principal and New Amsterdam Casualty Company as surety, covering the faithful performance by Mr. Laylin of his duties as Engineer of Public Works in the Department of Highways and Public Works.

The bond bears the approval of Director Herrick as to amount and surety and of myself as to form.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

3068.

STATE LANDS AT LAKE ST. MARYS—LEASE GRANTED FOR AGRICULTURAL PURPOSES—CAN CANCEL LEASE UPON NINETY DAYS' NOTICE WHEN LAND REQUIRED FOR ALLOTMENT PURPOSES—MAY ALLOT TO VARIOUS COUNCILS OF BOY SCOUTS OF AMERICA.

*Where a parcel of land constituting part of a tract dedicated to public park purposes by section 469 G. C., has been leased for agricultural purposes under favor of sections 471 G. C. and 13965, et seq., Appendix G. C., and such lease contains a clause permitting cancellation by the State upon ninety days' notice that the parcel is required for allotment purposes, the State is authorized, through its Department of Highways and Public Works, to terminate the lease for the purpose of making an allotment of such parcel and leasing the lots to various councils of the Boy Scouts of America.*

COLUMBUS, OHIO, May 8, 1922.

*Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.*

GENTLEMEN:—You have recently submitted for the consideration of this department a statement and inquiry as follows:

“This department granted a lease for agricultural purposes for certain lands on the south shore of Lake St. Marys to B. Romer, et al., on the 30th day of April, 1919, and said leasehold was subsequently transferred to The Reichert Food Products Company of Dayton, Ohio, which transfer was

duly approved by the Superintendent of Public Works. We are informed that later this leasehold was acquired by Mrs. Joseph Reichert, but no transfer was ever presented to the Superintendent of Public Works for approval.

This department has an application from the Lima Council of the Boy Scouts of America to acquire this land as a permanent park or camp site for the use of the Boy Scouts of Northwestern Ohio. The granting of this permission will be contingent upon your interpretation of the following restriction in the lease:

'The party of the first part hereto hereby reserves the right to cancel this lease, after ninety days' notice, whenever the same is required for park or allotment purposes by the State of Ohio.'

A copy of the lease is enclosed. Kindly advise us whether we can legally annul this lease for the purposes above stated."

The following statutes are pertinent to a consideration of your inquiry:

"Sec. 469. \* \* \* the body of water and adjacent lands owned by the state in the county of Mercer known as the Lake St. Marys \* \* \* are hereby dedicated and set apart forever for the use of the public, as public parks or pleasure resorts. \* \* \*"

"Sec. 470. The lakes named in the preceding section shall at all times, be open to the public as resorts for recreation and pleasure, including hunting, fishing and boating, but the privileges of hunting and fishing shall be subject to the fish and game laws of the state, and the boating privileges shall be subject to the rules and regulations prescribed by the superintendent of public works."

"Sec. 471. No state lands in or adjacent to Buckeye lake, Indian lake, Lake St. Marys, or Portage lakes shall ever be sold, but the superintendent of public works may lease such lands including marginal strips and marsh lands around said lakes, the outer slopes of artificial embankments, islands, borrow pits and state lands adjacent thereto as he deems proper under the laws governing the leasing of canal lands."

The statutes to which said section 471 refers as "governing the leasing of canal lands" are sections 13965 to 13968 of the Appendix to the General Code. These latter statutes are too long for quotation here, but in brief provide that leases of canal lands may be made for periods of fifteen years at a rental equalling six per cent of the appraised value of the land.

The copy that you submit shows that the lease now in question was made in conformity with the terms of said sections 13965, et seq., and was approved in writing by the Governor and the Attorney-General, as prescribed by section 464 G. C. The lease recites that the land therein described is to be used for agricultural purposes.

The paragraph which you quote from the lease is to the effect that the State may cancel the lease after ninety days' notice "whenever the same is required for park or allotment purposes by the state of Ohio." As has been seen, the tract of which the leased land constitutes a part, has already been dedicated as a public park. Hence, the reference in the cancellation clause to "park pur-

poses" must be taken to refer to a time when the State actually desires to make such improvements on the leased land as will fit it for public use as a park. This being true, it is plain that your department cannot now cancel the lease, upon the basis that the land is required for park purposes, with the view of turning the land over to the Boy Scouts; for such action would not involve the re-taking of the leased land for improvement as a park for the use of the general public. Of course, the very terms of section 469 import that once the tract is improved for use as a park, the whole public will be entitled to its use, to the exclusion of any limited part of the public, whatever may be the organized form of such limited part. It is possible that the legislature would be authorized to limit the use of the land to a given class, such for instance, as all boys under a certain age; but it is very doubtful whether even the legislature would have power to make the further restriction that the land could be used only by boys belonging to a given organization, however liberal might be the rules of the organization in respect to its membership. At all events, it is clear that the executive branch of the government is without authority to open the lands as a park other than to the whole public, under such rules and regulations as may be proper for the protection of the interests of the state and of the public in its use of the park.

We are thus reverted to the question as to the authority of your department under the words "allotment purposes" as used in the lease. The practice in that respect has been that at the various reservoirs or lakes throughout the state originally constituting part of the canal system, plats have been made of the adjacent lands and the lots shown on the plats have been rented for cottage purposes, and for the incidental business purposes connected with the operation of a public park. With this practice in mind, it is believed that the option of cancellation reserved in the present lease is sufficiently broad to permit your department to cancel the lease for the purpose of making an allotment or plat of the leased land with the object of leasing the various lots to various councils of the Boy Scouts organization for a fifteen-year period. Of course, the allotment will have to be followed by the usual appraisalment, and the payment of rental on the basis of six per cent of the appraisalment. It is not to be overlooked that the present lease is for agricultural purposes, and that the use now being made of the land is of a purely private character; whereas if the allotment plan is carried out and leases made to Boy Scouts organizations, a substantial part of the public will be enabled to have an appropriate place for recreation.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

3069.

TAXES AND TAXATION—PROCEEDINGS TO FORECLOSE LIEN FOR TAXES AGAINST LANDS CERTIFIED AS DELINQUENT—PROCEEDINGS SEPARATE AS TO EACH PARCEL OF LAND WHEN BROUGHT UNDER SECTION 5718 G. C.—WHEN PROCEEDINGS UNDER SECTIONS 2670 and 2671 G. C. DIFFERENT PARCELS MAY BE JOINED IN ONE ACTION—DECREES SEPARATE.

*Proceedings to foreclose the lien for taxes against lands certified as delinquent brought under section 5718 of the General Code, must be separate in the case of each parcel certified as delinquent.*