

4694.

DISAPPROVAL, TRANSCRIPT OF PROCEEDINGS RELATING
TO THE PROPOSED SALE OF OHIO CANAL LANDS IN
CLAY TOWNSHIP, TUSCARAWAS COUNTY, OHIO—
WALTER WOHLWEND.

COLUMBUS, OHIO, September 20, 1935.

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

DEAR SIR:—You have submitted for my examination and approval a transcript in duplicate of your proceedings relating to the proposed sale of two tracts of Ohio Canal lands containing two acres and .034 acres, respectively, situated in Clay Township, Tuscarawas County, Ohio, which tracts of land are more particularly described in said transcript. The proceedings here in question are for the sale of this property to one Walter Wohlwend for the appraised value of the land, to wit, the sum of \$150.00.

The proceedings for the sale of this property set out in said transcript are doubtless under the authority of Amended Substitute Senate Bill No. 72, enacted by the 89th General Assembly under date of April 29, 1931, 114 O. L., 541. This act in and by section 9 thereof, which has been carried into the General Code as section 14203-9, provides that "any tract of said abandoned Ohio canal land that cannot be leased so as to yield six per cent upon the appraised value thereof, as determined by the superintendent of public works, may be sold by said superintendent in strict accordance with the provisions of section 13971 of the General Code." In this connection, it is noted that this transcript shows a finding by you that the lands therein described cannot be leased to bring six per cent annual rental on the sum of \$150.00, the appraised value. The question here presented is whether under the admitted facts relating to this transaction, any legal effect can be given to this finding made by you. As to this, it appears that Walter Wohlwend has occupied and held this property under a fifteen year lease which expired some time in February of this year and that since the expiration of his lease he has continued to occupy, hold and use this property without making any application for a new lease of the same. In this situation, it would seem that inasmuch as the lease under which he held this property provided for an annual rental of six per cent upon the sum of \$250.00, the then appraised value of this property, and he has continued to hold over with the consent and acquiescence of the State, acting by and through the Superintendent of Public Works, said lessee has the status of a tenant from year to year and is liable for the rent on this property for the current year provided for by the terms of the lease. Touching this question, it was held in the case of *Baltimore and Ohio Railroad Company vs. West*, 57 O. S., 161, that where, after the expiration of

the term of a lease, the tenant holds over without any new agreement with the landlord, he becomes a tenant for that year at the annual rental provided for in the lease, and cannot terminate the tenancy before the end of the year without the landlord's consent. The court in its opinion in this case quoted with approval the following from Wood on *Landlord and Tenant*; section 13:

“When a tenant under a demise for a term holds over after the termination of the time for which the premises were let to him, without a new demise, the landlord may elect to treat him as a trespasser, or as a tenant holding under the terms of the original lease, unless it appears that by agreement or notice, the terms of the original agreement or lease were changed. * * when a tenant holds over, whether he is a tenant for a term of years, or from year to year, he impliedly holds according to all the conditions of the original lease which are applicable to his new situation, and the law will imply those terms which are found in the contract which has expired.”

The court further in its opinion quoting from Taylor on *Landlord and Tenant*, section 22 and 525, respectively, said:

“A tenant for years who holds over after the expiration of his term without paying rent, or otherwise acknowledging a continuance of the tenancy, becomes either a trespasser or a tenant, at the option of the landlord. Very slight acts on the part of the landlord, as a short lapse of time, are sufficient to conclude his election and make the occupant his tenant. But the tenant has no such election; his mere continuance in possession fixes him as a tenant for another year, if the landlord thinks proper to insist upon it. And the right of the landlord will not be effected by the fact that the tenant refused to renew the lease, and gave notice that he had hired other premises.

“When the landlord suffers the tenant to remain in possession after the expiration of the original tenancy, the law presumes the holding to be upon the terms of the original demise, subject to the same rent, and to all covenants of the original lease, so far, at least, as they are applicable to the new condition of things.”

Inasmuch as this implied agreement upon the part of the tenant to pay rent for the year in and during which he is holding over in the amount provided for in the lease, arises by operation of law rather than by contract between the parties (*Railroad Company vs. West*, supra), it would seem that the principle of law above noted would apply to the transaction here in

question, notwithstanding the fact that under the provisions of the act of the legislature above referred to now governing the execution of Ohio Canal land leases in said county, the Superintendent of Public Works is authorized to execute leases only for terms of fifteen years or some multiple thereof. In any event, I do not feel that I can take a position in this matter which will prevent the State from recovering rent from persons who continue to hold and occupy canal lands after the expiration of their leases.

It follows from what is said above that by reason of the act of the tenant under the expired lease in holding over after such expiration, there is now accruing to the State for the current year the annual rental provided for in said lease. And in this view, it is not seen how a finding can be made which will authorize you to sell this property to the holdover tenant at a valuation less than that upon which he is obligated to pay rent as a holdover tenant.

Upon the consideration above noted, I am unable to approve the transcript of the proceedings for the sale of this property to Mr. Wohlwend and I am herewith returning the same without my approval endorsed thereon.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4695.

TUITION—AGREEMENT BETWEEN SCHOOL DISTRICTS—
RECOVERY OF TUITION ON BASIS OF AGREEMENT
BY SCHOOL DISTRICT—CHARGES WHERE NO AGREEMENT EXISTS.

SYLLABUS:

1. *Where the rate of tuition for high school pupils who attended high school in a school district other than the district where they resided had been fixed by agreement between the boards of education of the two districts involved, for the school year 1934-1935, the school district where the pupils attended school in pursuance of that agreement is entitled to recovery from the district of residence of the pupils the full amount of tuition so fixed by the said agreement, without credit to the district of residence for the proceeds of any funds that might have been distributed to the district where the pupil attended school on the basis of average daily attendance of pupils in the said district.*

2. *Where no agreement existed with respect to said tuition, the district where the pupil attended school may recover from the district of residence of the pupil the amount of tuition as fixed by former Section 7747, General Code,*