

3094.

APPROVAL—FINDINGS ON AN APPLICATION BY THE TOLEDO GRAIN AND MILLING COMPANY FOR AN ADJUSTMENT OF UNPAID RENTALS DUE AND OWING THE STATE OF OHIO.

COLUMBUS, OHIO, August 28, 1934.

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

DEAR SIR:—You recently submitted for my examination and approval certain findings made by you on an application filed with you on or about the 23rd day of January, 1934, by The Toledo Grain and Milling Company for an adjustment of unpaid rentals due and owing by said company to the State of Ohio on a certain lease executed by the Board of Public Works to the company under date of December 30, 1912, for a term of thirty years, which lease provided for an annual rental of \$1500.00.

The lease here in question as executed apparently was one granting to the company for the term stated the right to the use of a minimum amount of surplus water passing through locks 46 and 47 in the City of Toledo, Ohio, and which likewise demised to the company for said stated term a parcel of 2.35 acres of land contiguous to said canal channel. There is nothing in the application of this company for an adjustment of the unpaid rentals on this lease or in the transcript of your proceedings on this application which indicates the statutory authority under which this lease was granted. As to this, I assume, however, that this lease was executed by the then Board of Public Works under the authority of section 20 of the act of March 23, 1840, 38 O. L. 87, 92, the provisions of which section were then found in section 14009, General Code.

The reason assigned by the Toledo Grain and Milling Company for a reduction in the amount of the unpaid rentals due and owing by it under this lease, which amount was and is the sum of \$1500.00 is that on account of the abandonment of this canal for canal and hydraulic purposes, the state has been unable since January 1, 1930, to deliver to said company, as the lessee named in this lease, any of the waters in said canal. In view of the decision of the Supreme Court of the United States in the case of *Kirk vs. Maumee Valley Electric Company*, 279 U. S. 797, and of earlier decisions by the Supreme Court of this state touching the question, it may be a matter of some doubt as to how far the inability of the state to furnish to said lessee the amount of water provided for in the lease, would constitute a failure of consideration so as to afford this company any defense to the claim of the state for the annual rental stipulated and provided for in the lease. However, I am quite clearly of the view that under the provisions of House Bill No. 467 enacted by the 90th General Assembly under date of June 8, 1933, 115 O. L. 512, you are authorized to take these facts into consideration in acting upon the application of the company for an adjustment and reduction in the amount of the unpaid rentals due and owing by the company to the state.

As above noted, the amount of such delinquent rentals is the amount of \$1500.00, and it is noted that in and by your finding the amount of such delinquent rentals has been reduced by you to the sum of \$1200.00. Upon examination of this application and your proceedings thereon, no legal

objections to your action making this adjustment in the amount of the unpaid rentals on this lease appear, and your finding in this matter is accordingly hereby approved.

In this connection, it is noted that the application of this company is headed as an application for adjustment of unpaid rental and cancellation of lease. However, there is nothing in the body of the application to indicate that the same is for any purpose other than to secure an adjustment of unpaid rentals. Neither is this application one for an adjustment of current rentals under the act of the 90th General Assembly, above referred to. Moreover, I do not construe your finding to be anything other than an adjustment and reduction in the amount of the unpaid rentals due and owing under this lease. And in this view and with this understanding, your finding in this matter is approved by me as is evidenced by my approval upon the original transcript and the copies thereof, all of which are herewith returned.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3095.

APPROVAL, NOTES OF GUYAN RURAL SCHOOL DISTRICT, GAL-
 LIA COUNTY, OHIO, \$9,026.00.

COLUMBUS, OHIO, August 28, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3096.

APPROVAL, NOTES OF PERRY RURAL SCHOOL DISTRICT, GAL-
 LIA COUNTY, OHIO—\$2,976.00.

COLUMBUS, OHIO, August 28, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3097.

APPROVAL, NOTES OF GREEN RURAL SCHOOL DISTRICT, GAL-
 LIA COUNTY, OHIO—\$1,633.00.

COLUMBUS, OHIO, August 28, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.