

legality contract between the city of Gallipolis and the Director of Highways of the State of Ohio, covering the following proposed improvement:

Section Gallipolis (Part)
Ohio River Road
State Highway No. 7
Gallia County.

Finding said contract in proper legal form, I have endorsed my approval thereon and am returning the same herewith.

Yours very truly,

THOMAS J. HERBERT,
Attorney General.

539.

LEASE—CANAL LAND, STATE TO DIVISION OF CONSERVATION, DEPARTMENT OF AGRICULTURE, DESIGNATED PORTION, HOCKING CANAL, GREENFIELD TOWNSHIP, FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, May 5, 1939

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, acting for and in the name of the State of Ohio, to the Division of Conservation of the Department of Agriculture of the State of Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for the payment of an annual rental of \$60.00, payable in semi-annual installments of \$30.00 each, there is leased and demised to the lessee above named the right to occupy and use for fish propagation, park and recreational purposes, that portion of the abandoned Hocking Canal property located in Greenfield Township, Fairfield County, Ohio, described as follows:

Beginning at a line drawn through Station 112 plus 00, of Bruce Doughton's Survey of said canal through Fairfield County, Ohio, and running thence southeasterly with said canal property, twelve thousand, two hundred forty (12,240') feet, more or less, to a line which is parallel to and twenty (20') feet northerly from the center line of the public road, crossing said canal near

Hooker's Station, and being all of the canal lying between the southwesterly line of said canal property and a line which is parallel to and twenty (20') feet southwesterly from the center line of the tracks of the Scioto Valley Traction Company, and excepting therefrom any of the above described property that has been conveyed to The Chesapeake and Ohio Railway Company, of Richmond, Virginia.

From the viewpoint of yourself as Superintendent of Public Works in the execution of this lease on behalf of the State of Ohio, as the lessor therein named, this lease is one which you are authorized to execute under the general provisions of Section 13965, General Code, and under the more special provisions of Section 1 of the Act of April 19, 1929, 113 O. L., 521 (Sec. 14152-3, G. C.). This section provides as follows:

"That the superintendent of public works of Ohio, as director thereof, subject to the approval of the governor and attorney general, be, and he is hereby authorized to lease or sell, as he may deem for the best interests of the state, in strict conformity with the provisions of Sections 13965, 13966, 13970 and 13971 of the General Code, relating to the selling or leasing of canal lands, those portions of the abandoned Hocking canal lands in Fairfield, Hocking and Athens counties, Ohio, that are still owned by the state of Ohio; if leases are granted, they shall be for a term of not less than fifteen (15) nor more than twenty-five (25) years, and the bed and banks of said abandoned canal property may be included in any lease of such canal lands."

This section of said act and your authority to execute leases of abandoned Hocking Canal lands thereunder are subject to the provisions of Section 2 of said act (Sec. 14152-3a, G. C.). This section provides that there is excepted and reserved from the provisions of the act any portion of said abandoned canal that is now occupied by state highways, or that may be designated within one year from the effective date of the act as lands necessary in any scheme of highway improvements adjacent to said abandoned canal lands.

Assuming, as I do, that no part of the abandoned Hocking Canal lands described in this lease is occupied by any state highway and that no part of this parcel of canal lands has been designated by the Director of Highways as lands necessary in any scheme of highway improvement adjacent thereto, it follows that you are authorized to execute a lease of this parcel of abandoned Hocking Canal land for the term and upon the conditions therein provided for.

As above noted, this lease is one executed to the Division of Conservation for fish propagation, park and recreational purposes. A con-

sideration of this lease obviously requires me to note not only the statutory provisions which authorize you as Superintendent of Public Works to execute leases of abandoned Hocking Canal land but to note also the statutory provisions touching the question of the authority of the Conservation Division represented by the Conservation Council to take a lease of lands for the purposes above stated. Although, in this connection, I do not find in the provisions of Section 472, General Code, which authorizes the Conservation Council to acquire lands for park purposes, or in any other statutory provision any authority by which the Conservation Council may acquire lands for park purposes by lease, authority is found in the provisions of Sections 1430 and 1435-1, General Code, relating to the authority and powers of the Conservation Council, for the acquisition by lease of lands for fish propagation purposes. If, as I assume is the case, these canal lands are being acquired by the Conservation Council primarily for fish propagation purposes under the authority conferred upon it by Sections 1430 and 1435-1, General Code, I do not think that the fact that the Conservation Council in the use of these lands for this primary purpose intends to improve and maintain such lands for the incidental purpose of affording a place of recreation for persons who may visit the place, in anywise affects the validity of the lease for the primary purpose above stated.

In this view, and finding that the lease has been properly executed by you as Superintendent of Public Works and by the Conservation Council, acting by the hand of the Conservation Commissioner pursuant to the authority of the Conservation Council, and finding further that the provisions of this lease and the conditions and restrictions therein contained are in conformity with statutory provisions relating to leases of this kind, I am approving the lease as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

540.

BOND—ELSIE A. MILLER, STENOGRAPHER, GRADE 2, CLASS A, DIVISION OF PLANT INDUSTRY, DEPARTMENT OF AGRICULTURE, \$2,000.00.

COLUMBUS, OHIO, May 5, 1939

HON. JOHN T. BROWN, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval, the bond of Elsie A. Miller, in the sum of \$2,000.00, with the London and Lancashire