

it would in my opinion be a gross abuse of discretion and a misapplication of public funds for a county board of education and a county superintendent of schools to require of the assistant county superintendents the taking over of the work of local administration in the several high schools and consolidated schools of the county school district, which work should be performed by a principal of schools, and thus relieve the local districts of the necessity of employing administrative heads of the schools, or principals, in each high school and consolidated school which the law in mandatory terms directs the local boards of education to do.

I am therefore of the opinion, in specific answer to your question, that it is unlawful for a county board of education to elect assistant county superintendents of schools for the purpose of requiring of those assistant county superintendents of schools the performance of duties in connection with the administration of high schools and consolidated schools within the county school district, which administrative duties should be performed by a principal of schools designated as such from among the teachers employed by the several local boards.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1898.

ABANDONED CANAL LANDS—HIGHWAY DIRECTOR MAY ONLY USE SUCH LANDS IN LUCAS COUNTY FOR PARK PURPOSES AS ARE INCIDENTAL TO A HIGHWAY—LEASE OF SUCH LANDS TO PARK DISTRICT NOW UNAUTHORIZED.

**SYLLABUS:**

*Under the act of the 87th General Assembly passed May 11th, 1927, (112 O. L. 360), providing for the abandonment for canal and hydraulic purposes of that portion of the Miami & Erie Canal in Lucas County, Ohio, between the Maumee side cut at Maumee, Ohio, and the point where said canal joins the Maumee River in Providence township, in said county, the only use that the State Highway Director may make of the canal lands abandoned by said act for park purposes is such only as will be incidental to a highway constructed by such officer in and upon said lands.*

*Neither said Highway Director nor any other officer of the state has at this time any authority to lease any part of said canal lands to the Lucas County park district or to any other person or persons.*

COLUMBUS, OHIO, May 23, 1930.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication over the signature of Harry S. Commager, Assistant Prosecuting Attorney, which reads as follows:

“Under Section 2976-1 et seq. G. C., a District Park Commission was created for a district co-extensive with the boundary lines of Lucas County. The members of this commission are desirous of utilizing for park purposes parts of the abandoned Miami and Erie Canal, the old bed of which is on the banks of the Maumee River, in Providence Township, Lucas County, Ohio.

Under Section 14178 et seq. G. C., the supervision and control of these lands have been placed with the State Highway Director.

Under Section 464, G. C., the Superintendent of Public Works is vested

with power and duties theretofore exercised by the Canal Commission, with a limitation that canal lands cannot be sold except upon the written approval of the Governor and Attorney General.

The Park Commission desires to have this abandoned canal bed utilized for park purposes, and with reference to this desire the following questions have arisen which I am transmitting to your department for its ruling.

1. Has any state officer or officers the authority to determine the use of said lands for park purposes, and if so are said officer or officers authorized to develop and maintain said lands as a public park?

2. Has any state officer or officers the authority to lease for a long period of years, or to sell to the Lucas County Park Commission said land?"

Sections 2976-1 et seq. of the General Code, referred to in your communication provide for the establishment of park and conservation districts in the several counties of the state upon the finding and order of the Probate Judge of the county upon application made therefor.

The affairs of said park and conservation districts are managed and controlled, as to each district so established, by three commissioners appointed by the Probate Judge; which commissioners, among other powers conferred upon them, have the power to levy taxes for the purposes of the district upon all of the taxable property therein, within the limitations prescribed by Section 2976-10, General Code, and by the general law of the state with respect to the levying, assessment and collection of taxes.

Among the powers conferred by the statutory provisions above noted upon the Board of Commissioners of such park and conservation district are those provided by Section 2976-7, General Code, as amended in 113 O. L. 660, which reads in part as follows:

"Such board shall have power to acquire lands either within or without such district for conversion into forest reserves and for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands, and to those ends may create parks, parkways, forest reservations and other reservations and afforest, develop, improve, protect and promote the use of the same in such manner as the board may deem conducive to the general welfare. Such lands may be acquired by such board, on behalf of said district, by gift or devise, by purchase, or by appropriation. In furtherance of the use and enjoyment of the lands controlled by it, the board may accept donations of money or other property, or may act as trustees of land, money, or other property, and use and administer the same as stipulated by the donor, or as provided in the trust agreement. The terms and conditions of each such donation or trust shall first be approved by the Probate Court before acceptance by the board."

From the provisions of the section of the General Code above quoted, it is seen that the commissioners of a park and conservation district so established have ample authority to acquire lands for the uses and purposes of such district. However, the questions presented in your communication have reference to canal lands owned by the State of Ohio, and the further consideration of these questions requires a determination of the power of state officers to lease or sell such lands for the use of a park and conservation district, or to otherwise use such lands for park purposes.

Prior to the enactment of Sections 14178, et seq., General Code, referred to by you, the lease and sale of canal lands on the sections of the Miami and Erie canal in question were governed by the provisions of Sections 13965, 13966 and 13971, General Code. These sections of the general code when read in connection with the later provisions of Section 464, General Code, authorized the superintendent of public

works to lease canal lands when the same were not necessary for the maintenance and navigation of the canal, and to sell such lands when the same could not be leased so as to yield a rental of 6% upon the valuation thereof, such sale to be made in the manner and subject to the conditions provided for in Section 13971, General Code.

It is to be observed, however, that the sections of the general code above noted have been superseded in their application to the portion of the Miami and Erie canal here in question by the provisions of the act of the 87th General Assembly, passed May 11, 1927, (112 O. L. 360; Sections 14178 to 14178-12, General Code), providing for the abandonment for canal and hydraulic purposes of that portion of the Miami and Erie canal lands in Lucas County, Ohio, between the Maumee side cut at Maumee, Ohio, and the point where such canal joins the Maumee river in Providence Township in said county. This act expressly provides that the State of Ohio reserves unto itself the title to all lands and waters to which it is entitled under the various acts providing for the construction of the Miami and Erie canal and to all lands now occupied by any part of said Miami and Erie canal, including all lands used for lock houses, waste ways or for other purposes which are now the property of the State of Ohio. It was further expressly provided by this act that so much of said lands as were used and occupied by the Miami and Erie canal shall be forever held by the State of Ohio for the purpose of constructing upon said lands a highway, to be erected, constructed and improved at such time or times as the State of Ohio may hereafter, either by legislative enactment or otherwise, find proper and convenient. Said act by Sections 5, 6 and 7 thereof (Sections 14178-4, 14178-5 and 14178-6, General Code), provides as follows:

"SECTION 5. The abandoned portion of said canal shall be under the supervision and control of the state highway director, to be devoted to highway and park uses and purposes as herein provided, and the director of highways of the State of Ohio is hereby authorized to, and he shall, within sixty days from the taking effect of this act, drain the water of said abandoned portion and prevent the water of the Maumee river from flowing into or through said abandoned part of said canal.

SECTION 6. As soon as practicable, after this act goes into effect, the director of highways of the State of Ohio, shall cause surveys to be made of the canal property herein abandoned, together with maps and plats of the same, and of all lands used in connection with that portion of the Miami and Erie canal, hereby abandoned, belonging to the State of Ohio, adjacent thereto, and file a copy thereof with the Governor.

SECTION 7. The director of highways is further directed to make a plat or plan, showing the highway, its length, grades and width of so much of the canal property as may be used for such highway purposes, and all other lands adjacent thereto that may be leased for other purposes."

Section 8 of said act (Section 14178-7, General Code) provides:

"SECTION 8. Until said highway shall be constructed and improved, no portion of the lands within the plat or plan showing such highway shall be leased for any purpose whatever, but until the State of Ohio shall construct and improve said lands for a highway, all municipal corporations through which said highway shall pass when completed, and the commissioners of Lucas County, Ohio, shall be permitted to use said canal lands for public purposes only, without compensation."

Perhaps more immediately touching one of the questions presented in your communication, said act of the General Assembly, in Section 9 thereof, (Section 14178-8,

General Code) provides that "all other lands which may be shown on said plat adjacent to said highway and which will not be used for highway purposes may be leased under the direction of the director of highways." By this section of the said act it is further provided that the lease of said canal lands that are not to be used for highway purposes shall be for terms not to exceed fifteen years and for a rental equal to 6% upon the appraised value of the lands so leased, with the proviso that if Lucas County, or any municipal corporation, township, or "other taxing district" therein desires to lease any portion of said lands not required for said highway purposes, the same shall be leased "to such taxing district" upon a rental of 4% per annum.

Addressing myself to the questions presented in your communication in the light of the statutory provisions above noted, it is observed that by Section 5 of the said act above quoted it is provided that the abandoned portion of said canal shall be under the supervision and control of the state highway director, "to be devoted to highway and park uses and purposes as herein provided." No other or further provision is made in said act for the use of any part of said abandoned canal lands for park purposes distinctly as such, but it is provided that all of said canal lands that are not to be used for highway purposes shall be leased by the director of highways. In this situation it must be concluded, by way of answer to your first question, that the use that the state highway director may make of such lands for park purposes is such only as will be incidental to the use of such lands for highway purposes, and that he does not have under the provision of said act any authority to lay out such canal lands as public park grounds and to maintain the same.

With respect to your second question, I am advised that the state highway director has not as yet made or caused to be made any surveys, maps or plans of the canal lands abandoned by said act under the authority conferred on him by Section 6 of said act above quoted, nor has such officer made any plat or plans of the highway to be laid out and constructed in and upon said canal lands as provided in Section 7 of said act.

Although under the provisions of the act of the General Assembly above referred to, the provisions of which have been quoted in part, neither the director of highways nor any other officer of the state has any authority to sell any part of the canal lands of the state abandoned by said act for canal and hydraulic purposes, authority is thereby conferred upon the director of highways to lease such of said lands as will not be used for highway purposes; and inasmuch as a park and conservation district such as that referred to in your communication is a "taxing district" within the meaning of Section 9 of said act, the director of highways would be authorized to lease such surplus lands to the board of commissioners of such district in the same manner and under the same conditions that he could lease the lands to the county or to a municipal corporation or other political subdivision therein. However, in the absence of a plat or plan of the highway to be constructed in and upon the canal lands here in question, the director of highways cannot officially know what part of said lands will not be needed for highway purposes and for this reason neither said highway director nor any other officer of the state can at this time lease any part of these canal lands to the park district referred to in your communication or to any other person or persons.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*