

3896.

APPROVAL, LEASE TO CANAL LANDS IN THE CITY OF MASSILLON,
STARK COUNTY, OHIO—THE CITY OF MASSILLON:

COLUMBUS, OHIO, December 29, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval an Ohio Canal land lease in triplicate, executed by you as superintendent of public works and as director of said department, to the city of Massillon, Ohio, by which instrument there is leased and demised for the uses and purposes therein stated to said city for a term of ninety-nine years, renewable forever, the following described Ohio Canal lands which were abandoned for canal purposes by Amended Senate Bill No. 235, enacted by the 88th General Assembly, April 19, 1929, 113 O. L. 532:

That portion of the abandoned Ohio Canal property within the corporate limits of the City of Massillon, Stark County, Ohio, including the full width of the bed and embankments thereof, as owned by the State of Ohio, commencing at the intersection of the north corporation line of said city, with said abandoned Ohio Canal, said intersection being at or near Station Zero of G. F. Silliman's survey of the Ohio Canal through said City of Massillon, made under the direction of the State Board of Public Works of Ohio in 1910, and extending thence southward over and along said abandoned Ohio Canal property, a distance of three (3) miles, more or less, to the head of Lock No. 5-A, of Ohio Canal Locks, numbering south from the Portage Summit Level of said canal, and including any canal feeder lands, basins, wide waters and state lots, also locks, waste-weirs, wickets, valves, culverts and devices of whatever kind connected therewith, heretofore used in connection with said abandoned Ohio Canal property; Subject, however, to all the rights of existing leases at the date at which said Amended Senate Bill No. 235 became effective, and likewise the renewals thereof, under the provisions of Section 9 of said act.

For further description relating to the canal lands described above, reference is hereby made to Plats Nos. 50, 51, 52 and 53, of G. F. Silliman's survey of the Ohio Canal through the City of Massillon, Ohio, made under the direction of the State Board of Public Works in 1910, and now on file in the office of the Department of Public Works, at Columbus, Ohio.

By said instrument of lease there is likewise granted to the city of Massillon the right to take over by assignment a large number of leases heretofore executed by the superintendent of public works to various persons and corporations covering parts of the section of said Ohio Canal above described.

Said lease has been executed under the act of April 19, 1929, above noted; and an examination of the provisions of said lease discloses that each and all of the same are in conformity with the provisions of said act, including the annual rental to be paid by the city for said lease in the sum of \$12,226.00, which is payable in semi-annual installments of \$6,113.00 each.

Said lease is accordingly approved by me as to legality and form as is evidenced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3897.

OFFICES INCOMPATIBLE—CITY AUDITOR AND CLERK OF WATERWORKS DEPARTMENT OR ELECTRIC LIGHT DEPARTMENT—SECTION 4276, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *The provisions of Section 4276, General Code, purporting to authorize the council in cities having a population of less than twenty thousand to merge certain offices therein named, are in conflict with the provisions of Section 1, Article XVIII of the Constitution of Ohio.*

2. *The council of a city which operates under general laws, is without power to merge the office of city auditor with that of the clerk of the waterworks department or electric light department when the electric light department and the waterworks department are combined, regardless of the population of the city.*

COLUMBUS, OHIO, December 30, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication wherein you submit for my consideration two questions:

(1) "May Council by ordinance merge the duties of City Auditor and Electric Light Department Clerk, under the provisions of Section 4276 G. C.?"

(2) If such merging of offices is lawful, may any part of the compensation of the merged office be paid from electric light funds?"

I am advised that these questions have been submitted at the request of the authorities of several villages which have advanced by reason of the late Federal census, to cities, and the desire to simplify, as much as possible, the government of these cities. One of these municipalities is the city of Miamisburg, where council sought to combine, by ordinance, the duties of city auditor and clerks of one or more boards of the city, by authority of Section 4276, General Code. The solicitor of Miamisburg has advised the council that they are without power to combine these various positions, even though the statute, in terms authorizes such action. He contends that the statute is unconstitutional.

The question is made for the reason that in a number of previous opinions of this office, the action of various municipalities in combining the duties of city auditor with those of clerks of the boards mentioned in Section 4276, General