

331.

LEASE—CANAL LAND, STATE TO THE OHIO FUEL GAS COMPANY, COLUMBUS, HOCKING CANAL, DESIGNATED PORTION, IN MAPLE STREET, LANCASTER, FAIRFIELD COUNTY.

COLUMBUS, OHIO, March 20, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of such department to The Ohio Fuel Gas Company of Columbus, 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 \$704.00, payable in semi-annual installments of \$352.00 each, there is leased and demised to the lessee above named the right to use as a right of way for a natural gas pipe line the berme bank of the Hocking Canal beginning at Station 507+68 of W. C. Row's Survey of said canal, same being at the east line of Maple Street in the City of Lancaster, Fairfield County, Ohio, and extending thence northward and westward nineteen hundred and sixty-eight (1968') lineal feet to Station 488+00 of said survey.

Also, a right of way for a natural gas pipe line over and along the berme bank of the Hocking Canal in Fairfield County, beginning at Station 295+82, of W. C. Row's Survey of said canal, and extending thence northward fourteen thousand, seven hundred and seven (14,707') lineal feet to Station 148+75, of said survey.

Also, a right of way for a natural gas pipe line over and along the berme bank of the Hocking Canal in Fairfield County, beginning at Station 112+00, of W. C. Row's Survey of said canal, and extending thence northward fifty-six hundred (5600') lineal feet to Station 56 plus 00, of said survey.

Also, a right of way for a natural gas pipe line over and along the berme bank of the Hocking Canal in Fairfield County, beginning at Station 507+68, of W. C. Row's Survey of said canal and extending thence southward thirty-three thousand, two hundred and thirty-two (33,232') lineal feet to Station 804+00, of said survey.

By the terms of the lease above noted. The Ohio Fuel Gas Company, the grantee named in this instrument, is given the right to lay a pipe line for the transportation of natural gas in and along the berme bank of the Hocking Canal between the points above indicated. And in this view as to the purpose and effect of this lease, I assume that this lease is one executed under the provisions of section 13970, General Code, applying generally to canal and reservoir land, and under the more specific authority of an Act of the 88th General Assembly enacted under date of April 19, 1929, 113 O. L., 521, applying only to the lands of the Hocking Canal which were abandoned for canal purposes by an Act passed by the 79th General Assembly under date of May 31, 1911, 102 O. L., 490. Under the provisions of section 13970, General Code, which were enacted in their present form by an Act of the General Assembly under date of April 16, 1900, 94 O. L., 345, the Commission therein referred to, the Board of Public Works, and the Chief Engineer of the Public Works were authorized to lease to any person or persons, or to any corporation organized under the laws of this State the right to lay one or more lines of pipe along the berme bank and along the outer slope of the towing path embankment of any canal, basin or reservoir of any of the canals of this State, for the purpose of transporting oil or gas from the natural oil or gas fields for fuel, lighting and other purposes. By this section it was further provided that the annual rental under a lease of this kind should be six per cent of the valuation of the canal land so leased, and that the term of such lease should be for a period not exceeding ten years. Whatever power and authority was conferred upon the Canal Commission and the Board of Public Works in and by the provisions of section 13970, General Code, passed to the Superintendent of Public Works under the provisions of section 464, General Code.

Inasmuch, however, as under the provisions of this section of the General Code a lease of this kind for the purpose above stated is limited as to the term thereof to the period of ten years provided for in this section, authority for the execution of the lease here in question for a term of fifteen years must be found, if at all, in the later provisions of the Act of April 19, 1929, above referred to. As to this, it is noted that although this Act in section 1 thereof (sec. 14152-3, G. C.) provides that the Superintendent of Public Works of Ohio as Director thereof, subject to the approval of the Governor and the Attorney General, is authorized to lease or sell, as he may deem for the best interests of the State, those portions of the abandoned Hocking Canal lands in Fairfield, Hocking and

Athens Counties remaining undisposed of "in strict conformity with the provisions of sections 13965, 13966, 13970 and 13971 of the General Code." This section of said Act further provides that "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." It is thus seen that although under the provisions of this later Act the Superintendent of Public Works is authorized, generally, to execute leases of this kind in conformity with the provisions of section 13970, General Code, a special provision is made in such later Act with respect to the term of the lease which, as therein stated, is to be not less than fifteen years and not more than twenty-five years. This provision in the Act of April 19, 1929, as to the term of a lease of this kind should, in my opinion, be given effect as an exception to the more general provisions of section 13970, General Code, above referred to. And in this view, the lease here in question may be approved so far as the term thereof as provided for in this lease instrument, is concerned.

On examination of this lease instrument, I find that the same has been properly executed by you as Superintendent of Public Works and as Director of such department, acting for and on behalf of the State of Ohio, and by The Ohio Fuel Gas Company, the lessee therein named, acting by the hand of T. H. Kerr, Vice President, pursuant to authority conferred upon him for the purpose by a resolution of the Board of Directors of The Ohio Fuel Gas Company adopted under date of November 17, 1938.

Upon further examination of this lease instrument, I find that the provisions thereof and the conditions and restrictions therein contained are in conformity with the statutory provisions above noted and with other statutory enactments relating to leases of this kind. I am accordingly approving this lease as is evidenced by my approval endorsed upon the lease instrument and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.