

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$24.00, payable in semiannual installments of \$12.00 each, there is leased and demised to the lessee above named, the right to occupy and use for cottage site and dock landing purposes, the inner slope and waterfront and the outer slope and borrow pit adjacent thereto that is included in the west-half of Embankment Lot No. 59, west of the waste-gates as laid out on the northerly embankment at Buckeye Lake, by the Ohio Canal Commission in 1905, and being part of the Northeast Quarter of Section 22, Town 17, Range 18, Fairfield County, Ohio, and being the same half lot that was leased by the State of Ohio to William Zipf, et al., from the State of Ohio by lease dated June 13, 1906; said half lot has a frontage of fifty feet, measured along the top of the outer slope of the reservoir embankment.

Upon examination of this lease, I find that the same has been properly executed by you as Conservation Commissioner, acting on behalf of the State of Ohio, and by Dr. Curtis A. Smith, the lessee therein named. Upon examination of the provisions of this lease and the conditions and restrictions therein contained, I find the same to be in conformity with the provisions of Section 471 and of other sections of the General Code relating to leases of this kind.

I am, accordingly, approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

115.

CERTIFICATE OF ELECTION ON APPOINTMENT—GOVERNOR MUST ISSUE COMMISSION WHEN — JUDICIAL QUESTION, WHEN.

SYLLABUS:

When a certificate of election or appointment, regular and legal upon its face, is presented to the Governor of the State of Ohio, reciting the fact that the person named therein has been duly elected or appointed to an office under the laws of the State, it is the mandatory duty of the Governor to issue to him a commission as provided by law. Whether

or not he has been legally appointed is a judicial question, to be determined by a court of competent jurisdiction.

COLUMBUS, OHIO, February 9, 1937.

HON. MARTIN L. DAVEY, *Governor of Ohio, Columbus, Ohio.*

YOUR EXCELLENCY: I acknowledge receipt of your request of recent date as follows:

“As the credentials and Commission for the appointment of John H. Gahl have been presented to this office and since I have already signed one Commission of appointment for this office of County Sheriff for Hamilton County, I would like an informal opinion from your office as to the proper procedure for me to follow in this instance.”

There is a paucity of law relative to official commissions. Section 138 of the General Code provides as follows:

“A judge of a court of record, state officer, county officer, militia officer and justice of the peace, shall be ineligible to perform any duty pertaining to his office, until he presents to the proper officer or authority a legal certificate of his election or appointment, and receives from the governor a commission to fill such office.”

The Supreme Court of Ohio as early as 1832 in the case of *State ex rel. vs. Moffett*, 5 Ohio Reports, 358, gave the legal substance of a commission. It is in substantially the following words:

It is the commission issued in pursuance of the statutes which confers the right upon the official (to act). The right is derived from the election or appointment of which the commission is only evidence. But it is evidence without which the officer cannot proceed to act officially.

Your communication is accompanied by the certificate of appointment, executed by the County Commissioners of Hamilton County, Ohio, under the seal of that office. There is no question but that the Board of County Commissioners of Hamilton County, if there was in fact a vacancy, had the right to appoint John H. Gahl to the office of Sheriff. This they have done, as is evidenced by the certificate. Mr. Gahl's commission can come from but one source—the Governor. Gahl

has done all that could be required of him under the statute. His certificate of appointment appears to be regular on its face, and, in my opinion, that is all that is necessary to entitle him to a commission. Whether or not he can continue to perform the duties of the office of Sheriff is a judicial matter, to be determined by the courts.

In short, it is my opinion that when a person has been elected or appointed and presents to the proper officer a legal certificate of his election or appointment, such officer has no other choice than to issue the commission.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

116.

BOARD OF EDUCATION—DEPOSITORY CONTRACTS, FEDERAL RESERVE MEMBER BANK—CONTRACT PERIOD—COMPLIANCE WITH LAW—CANNOT EXTEND PERIOD, WHEN.

SYLLABUS:

1. *A board of education can enter into a contract with a member bank of the Federal Reserve System for the deposit of school funds for the period of time extending from within thirty days after the first Monday in January to August 23, 1937, after full compliance by the Board of Education and the bank with all the requirements prescribed by Sections 7604 to 7609, inclusive, General Code.*

2. *A board of education and a member bank of the Federal Reserve System cannot extend an already existing contract providing for the deposit of school funds from January 1, 1937, to August 23, 1937.*

COLUMBUS, OHIO, February 9, 1937.

HON. THEODORE TILDEN, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"I have had numerous requests from boards of education throughout the county, stating that the new law which is effective August, 1937, forbids the payment of interest on school board funds after that date.