

it will, perhaps, be more appropriate for me to discuss this question when there has been submitted to me a lease executed under lawful authority.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5893.

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APPROVAL—CONTRACT FOR HIGHWAY IMPROVEMENT IN  
CLARK COUNTY, OHIO.

COLUMBUS, OHIO, July 24, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract covering the following:

Clark County  
D. T. & I. Overhead  
Fountain Avenue, Springfield,  
Ohio  
U. S. Works Program Grade  
Crossing Project No. Ohio  
W. P. G. M. 859-A

Finding said contract correct as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5894.

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APPROVAL—LEASE TO LAND IN DEFIANCE COUNTY, OHIO,  
FOR PARK AND RECREATIONAL PURPOSES—DEFIANCE  
COUNTY METROPOLITAN PARK BOARD.

COLUMBUS, OHIO, July 25, 1936.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease in triplicate, executed by the state of Ohio, through you

as Conservation Commissioner acting as the authorized and designated agent of the Conservation Council, to The Defiance County Metropolitan Park Board.

By this lease, which is one for a stated term of two years and which provides for the payment to the state of an annual rental of one dollar, there is leased and demised to the lessee above named for park and recreational purposes a tract of land owned by the state in Defiance County, Ohio, which is located between the center line of U. S. Highway No. 24 and the northerly low water line of the Maumee River, and extending from the Defiance-Henry County line northwesterly to the Fort Defiance dam; said property being more particularly described as being parts of the Fractional North-half of Section 22, Fractional North-half of Section 23, and part of the Fractional Northwest Quarter of Section 24, all in Township 4 North, Range 5 East in Richland Township in said county, and containing 40.59 acres of land, more or less.

This tract of land, I assume, was acquired by the state through the Conservation Council for park and recreational purposes under the authority conferred by section 472, General Code, which provides, among other things, that the Conservation Council may, subject to the approval of the Attorney General, acquire by gift, purchase or by appropriation proceedings, on behalf of the state, such real and personal property, rights and privileges as may be necessary in its judgment for the use, extension, enlargement and maintenance of public parks and resorts, and for new public parks, resorts and reservoirs. And such lands have been under the control of the Conservation Council as provided for in this section and by section 1438-1, General Code, which provides that the Conservation Council shall have and take the general care, protection and supervision of the state parks therein named and all other state parks and lands owned by the state, except lands, the care and supervision of which are vested in some other officer, body, board, association or organization. The lease of the lands here in question has been made, I assume, under the authority conferred upon the Conservation Council by section 472-1, General Code, which provides that the Conservation Council shall exercise all powers and duties heretofore conferred by law upon the Superintendent of Public Works with respect to the control, management and lease of lands within the state to which the state has title, except canals and public works and institutional lands, but that no lease of such lands shall be made except upon the written approval of the Governor and the Attorney General.

Although, as above noted, these lands were acquired by the Conservation Council in the name of the state of Ohio and on its behalf and the Conservation Council is charged generally with the duty of maintaining these lands for the purposes for which they were acquired, I am

not prepared to say that the Conservation Council, acting under the authority conferred upon it by law, may not lease lands thus acquired for a limited term where the object sought by the Conservation Council in the execution of the lease is to conserve the property for park and recreational purposes and to secure proper maintenance of the property to this end. In this connection, it is noted that the annual rental provided for in this lease is one dollar. The rental thus provided for obviously has no proper relation to the value of the property covered by the lease. As to this, I am advised by your department that the object and purpose of the Conservation Council in executing this lease to The Defiance County Metropolitan Park Board is to secure police patrol and other maintenance of the property by the lessee which the Conservation Division, by reason of a lack of available funds, is unable to furnish with respect to this property. In this situation, it would seem that the benefits thus derived by the state and by the Conservation Council in the exercise of its general control over this property would be a sufficient consideration for the lease which may be properly taken into consideration in determining the validity of this lease with respect to the consideration supporting the same. In other words, although this lease instrument contains the recital that the lease of this property is in consideration of the payment of an annual rental of one dollar, this recital is not conclusive as to the real consideration moving to the state and to the Conservation Council which actuated this body in executing the lease. Although the consideration stated in an instrument of this kind may, perhaps, be conclusive for the purpose of giving effect to the operative words of the instrument, the consideration thus stated is for other purposes open to explanation by parol proof and is prima facie evidence only of the amount and nature of the consideration. See *Shehy v. Cunningham*, 81 O. S. 289.

The lease instrument here in question has been properly executed by the state, acting through you as the designated agent of the Conservation Council, as above stated, and by The Defiance County Metropolitan Park Board, acting by the hand of its Secretary pursuant to the authority of a resolution of The Defiance County Metropolitan Park Board duly adopted under date of June 8, 1935. An examination of the provisions of this lease and of the conditions and restrictions therein contained show that the same are such as may properly be incorporated in an instrument of this kind under the above noted and other statutes relating to the lease of lands belonging to the state.

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.

In approving the lease here in question I am assuming that the lands covered by the lease were acquired by the Conservation Council for the

state and in its name for park and recreational purposes and that in acquiring such lands the Conservation Council had in mind the control and maintenance of these lands through its own designated agencies; and that the lands were not acquired by the Conservation Council for the purpose of turning the same over by lease or otherwise to a metropolitan park board or to any other political subdivision or authority. As to this, I am not ready to subscribe to the view that the Conservation Council is authorized to acquire lands in the name of the state merely for the purpose of turning the control and use of the property over to some other agency or authority. On the contrary, I assume, as above stated, that the Conservation Council is executing this lease to The Defiance County Metropolitan Park Board for the limited term of two years merely as a means of affording protection to and maintenance of the property which, for want of available moneys, it is unable to give to this property by other means.

I am herewith enclosing the lease and the duplicate and triplicate copies thereof.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5895.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO,  
\$6,000.00.

COLUMBUS, OHIO, July 25, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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5896.

APPROVAL—BONDS OF CITY OF YOUNGSTOWN, MAHON-  
ING COUNTY, OHIO, \$138,000.00.

COLUMBUS, OHIO, July 25, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*