

of judicial discretion is always involved in the issuance of a writ of mandamus and also having in mind the fact that regard will be had to the exigency which calls for the exercise of such discretion and in addition to this remembering that as stated in High's Extraordinary Legal Remedies, supra, the writ will not go to command the performance of an act unlawful in its absence, it seems clear and it is accordingly my opinion that mandamus will not lie to compel a county treasurer to pay warrants for county officers' salaries in violation of Section 2989, General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1213.

APPROVAL — CANAL LAND LEASE EXECUTED BY THE
STATE OF OHIO TO AMERICAN LEGION OF NEWCOMER-
ERSTOWN, OHIO.

COLUMBUS, OHIO, September 22, 1937.

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 executed by you as Superintendent of Public Works and as Director of said department to The American Legion, Thomas C. Montgomery Post No. 431, of Newcomerstown, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$50.00, there is leased and demised to the lessee above named the right to occupy and use for club and recreational purposes that portion of the abandoned Ohio canal property, including the full width of the bed and banks thereof, located in the village of Newcomerstown, Tuscarawas County, Ohio, which is described as follows:

Beginning at the point of intersection of said canal property and the westerly line of the alley between Bridge and Cross Streets, and running thence westerly with the lines of said canal property, one hundred ninety-nine and seven-tenths (199.7') feet, more or less, to the east line of Cross Street and contain-

ing sixteen thousand, nine hundred seventy-four and five-tenths (16,974.5) square feet, more or less.

Upon examination of this lease, which is executed by you under the authority of an Act of the 89th General Assembly enacted April 29, 1931, 114 O. L. 541, I find that the same has been executed by you in your official capacity above stated and by The American Legion, Thomas C. Montgomery Post No. 431, the lessor, by the hand of John J. Gainer, Commanler, duly authorized in the premises.

Assuming, as I do that this property has not been designated for state highway purposes and that no application for the lease of the same has been made by any of the corporations or persons having prior rights to the lease of this property under Section 8 of said Act, I find that the terms and provisions of this lease and the conditions and restrictions therein contained are in conformity with the above mentioned Act of the legislature and with other related statutes. I am, therefore, approving this lease, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1214.

APPROVAL — CANAL LAND LEASE EXECUTED BY THE
STATE OF OHIO TO THE DELTA FUEL AND SUPPLY
COMPANY OF TOLEDO, OHIO.

COLUMBUS, OHIO, September 22, 1937.

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 submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said department to the Delta Fuel and Supply Comuanry of Toledo, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$1,000.00, payable in semi-annual installments of \$500.00 each, during the term of lease, there is leased and demised to the lessee above named the right to occupy and use for