

3410.

APPROVAL—CANAL LAND LEASE, STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, TO THE PURE OIL COMPANY, COLUMBUS, OHIO, PARCEL ABANDONED MIAMI AND ERIE CANAL LANDS, CITY OF TROY, MIAMI COUNTY, OHIO, RIGHT TO OCCUPY AND USE FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF OIL AND GASOLINE FILLING STATION.

COLUMBUS, OHIO, December 15, 1938.

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

DEAR SIR: You have submitted for my examination a canal land lease in triplicate executed by the State of Ohio, acting through you as Superintendent of Public Works, to The Pure Oil Company, Columbus, Ohio, in and by which there is leased and demised to said lessee the right to occupy and use for the construction, maintenance and operation of an oil and gasoline filling station, a parcel of abandoned Miami and Erie Canal lands in the City of Troy, Miami County, Ohio,

Commencing at a point in the easterly line of Market Street in said city that is one hundred (100') feet southwest of the southeast corner of Canal and Market Streets, measured along the southeasterly line of Market Street; thence southwesterly along the easterly line of Market Street, seventy-three (73') feet, more or less, to the northwest corner of a tract of state land now under lease to Warren J. Pearson; thence southeasterly parallel to the southerly line of Canal Street, one hundred seventy-three (173') feet southerly therefrom, one hundred twenty (120') feet; thence northerly, at right angles, seventy-three (73') feet; thence northwesterly, one hundred twenty (120') feet, to the place of beginning and containing eight thousand seven hundred sixty (8,760) square feet, more or less.

Also the privilege of connecting the under ground gasoline tank located upon the ground herein described, with a pump to be located near the southeasterly rail of the bridge over the canal at Market Street.

This lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$480.00 payable in semiannual installments of \$240.00 each, is executed under the authority of the DeArmond

Act, so-called, 114 O. L., 546. And, assuming as I do, that no part of the above described parcel of abandoned Miami and Erie Canal lands has been designated by the Director of Highways as lands needed for highway purposes, under Sections 6 to 9, inclusive, of said act, and, further, that no application has been made by any municipal corporation or other political subdivision for the lease of said parcel of land or of any part thereof for public park purposes as provided for in Section 13 of said act, I find that you are authorized to execute this lease under the authority of Section 19 of the act above referred to.

Upon examination of this lease, I find that the same has been executed by you as Superintendent of Public Works for and in the name of the State of Ohio and by The Pure Oil Company, the lessee therein named, by the hand of L. S. Wescoat, Vice President, acting pursuant to the authority of a resolution of the Board of Directors of said company, all in the manner provided by law. I further find that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the provisions of the act of the legislature above noted and with other statutory enactments 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 enclosed.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3411.

MUNICIPALLY OWNED PUBLIC UTILILTY—MUNICIPAL CORPORATION—COUNCIL — ORDINANCE—FURNISHING FREE OF CHARGE SERVICES OF UTILITY PLANTS —PAYMENT OF SERVICE FROM GENERAL REVENUE FUND—PRIVATE PROPERTY FOR PUBLIC USE—COMPENSATION — GENERAL FUND—COST — FINDINGS—SURPLUS.

*SYLLABUS:*

1. *The council of a municipal corporation may not provide by ordinance for furnishing free of charge, the services of its municipally owned public utility plants when used for a municipal or public purpose, without providing also, for the payment to the utility funds for such service from its general revenue fund. To do otherwise would be to fly in the face*