

paid to the bondsman, the township trustees remaining liable for any deficiency that may occur.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4653.

APPROVAL, LEASE TO RESERVOIR LAND IN INDIAN LAKE, FOR
RIGHT TO USE FOR WALKWAY, LAWN AND DOCKLANDING
PURPOSES—A. L. FOLEY.

COLUMBUS, OHIO, September 27, 1932.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge your recent communication over the signature of the Chief of the Bureau of Inland Lakes and Parks, submitting for my examination and approval a certain reservoir land lease executed by the Conservation Commissioner under the authority conferred upon him by Section 471, General Code, as amended by the 88th General Assembly in the enactment of the Conservation Act. By the lease here in question, there is granted to one A. L. Foley of Springfield, Ohio, the right for a term of fifteen years to use and occupy for walkway, lawn and docklanding purposes that portion of the State Reservoir property along the westerly end of Lot No. 43 of the allotment of lands on Orchard Island, in Indian Lake, that lies between the ordinary water line of the reservoir and a contour line run one foot above the waste-weir line of Indian Lake.

On examination of this lease, I find that the same has been executed by the Conservation Commissioner and by the above named lessee in the manner provided by law. And assuming that the State of Ohio has title to the property covered by the lease, I find that the provisions of this lease and the conditions and restrictions therein contained are in conformity to statutory provisions relating to leases of this kind.

The suggestion above made with respect to the question of the state's title to this property arises by reason of certain litigation in the Common Pleas Court of Logan County in which the state was not a party but in which, as I am advised, the question was made as to whether or not the owners of land on Orchard Island did not have proprietary rights in such land down to the water's edge. This question, so far as I am advised, has never been submitted to this office for opinion or determination and no opinion is expressed upon the question at this time. I am approving this lease as to legality and form on the assumption, above noted, that the state has title to the land covered by the lease. If, on further investigation of fact, any substantial question should arise in your mind with respect to the title of the state to this property, the lessee above named should be advised of the fact before the lease is delivered to him and before any money is taken from him by way of rental for this land.

For the reasons above stated, I am approving this lease as to legality and

form and I herewith return the same, together with the duplicate and triplicate copies thereof, with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4654.

INTANGIBLE TAX—TAX AND TAXATION—DISTRIBUTIVE FEATURES
OF ACT DISCUSSED WITH REFERENCE TO DECISION OF COURT
OF APPEALS.

SYLLABUS:

In view of the decision of the Court of Appeals of Hamilton County in the case of Gorman, etc., vs. Friedlander, et al., rendered September 26, 1932, it is not only the right, but also the duty, of the proper officials in each county at once to distribute to the local subdivisions in the county entitled thereto under the provisions of sections 6, 7 and 8 of the intangible tax law, such portion of the advance payment of such tax, not exceeding such county's proportionate share thereof as is, under the terms of the law, retained in the county and distributable to such subdivisions, leaving any surplus funds over and above the county's distributable share, to abide further court action or legislation.

COLUMBUS, OHIO, September 27, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This acknowledges receipt of your letter of even date herewith, which is as follows:

“Since the decision of the Court of Appeals of Hamilton County in the case of *Gorman, etc., vs. Friedlander, et al.*, rendered September 26, 1932, some question has arisen with respect to the rights and obligations of county officials in connection with the distribution of the proceeds of the so-called intangible tax now held in county treasuries by reason of the pendency of such suit. I will appreciate your opinion upon the following question:

What, if any, portion of the proceeds of the advance payment of the so-called intangible taxes for the year 1932 are now distributable by county officials to the subdivisions to whom distribution is to be made pursuant to the provisions of sections 6, 7 and 8 of Amended Senate Bill No. 323, 89th General Assembly of Ohio?”

It is unnecessary, for the purposes of this opinion, to set forth in detail the provisions of the so-called intangible tax law which were subject to attack in the action to which you refer and which are involved in your question. It is sufficient to state that the action instituted by the Prosecuting Attorney of Hamilton County rendered it necessary to withhold distribution of the proceeds of this tax; and the decision of the Common Pleas Court, in which the action originated, held all the distributive sections of the law unconstitutional and, consequently,