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APPROVAL—LEASE, CANAL LAND, DEPARTMENT OF PUBLIC WORKS WITH THE ESTATE OF MARY D. DELAPLANE, MERRILL ARMSTRONG, ADMINISTRATOR, FOR USE AGRICULTURAL PURPOSES, PARCEL ABANDONED OHIO CANAL LANDS, HARRISON TOWNSHIP, PICKAWAY COUNTY, OHIO, FIFTEEN YEARS, ANNUAL RENTAL \$36.00 PER YEAR.

COLUMBUS, OHIO, September 14, 1938.

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

DEAR SIR: You have resubmitted 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 Estate of Mary D. Delaplane, Merrill Armstrong, Administrator," by which lease instrument you lease and demise to the lessee therein named the right to occupy and use for agricultural purposes a parcel of the abandoned Ohio Canal lands, including the full width of the bed and banks thereof, in Harrison Township, Pickaway County, Ohio, which parcel of canal land is more particularly described in this lease instrument. This lease is signed by you in your capacity as Superintendent of Public Works and as Director of Public Works, as party of the first part, and by "The Estate of Mary D. Delaplane," by the hand of Merrill Armstrong, Administrator, party of the second part.

This lease instrument, as the same was originally submitted to me, was disapproved by me by a letter directed to you under date of July 29, 1938, for the reason that the same purported to bind the Estate of Mary D. Delaplane, deceased, and there was nothing in said instrument or in any other file submitted to me to show that the administrator of the estate had any authority to execute this lease on behalf of said estate and to obligate such estate for the payment of the annual rentals provided for in this lease instrument.

Since my former communication to you disapproving this lease instrument as then presented, the Probate Court of Pickaway County, which has jurisdiction over the administration of the Estate of said Mary D. Delaplane, deceased, made an order finding that this lease is necessary for the successful operation of the farm owned by Mary D. Delaplane at the time of her death, which farm and the lands therein contained are contiguous to the canal lands covered by this lease. Following this finding said court made and entered an order

“that said administrator be and he is hereby authorized to enter into a lease with the State of Ohio for the canal lands through said Delaplaine farm, said lease to run for a period of fifteen (15) years at a rental of thirty-six dollars (\$36.00) per year.”

This order of the Probate Court of Pickaway County authorizing the Administrator of the Estate of Mary D. Delaplaine to enter into the lease here in question suggests a consideration of Section 10509-9, General Code, which provides as follows:

“Except as otherwise directed by the decedent in his last will and testament, if any, an executor or administrator shall have authority without personal liability for losses incurred, to continue the decedent’s business during one month next following the date of the appointment of such executor or administrator, unless the court directs otherwise; and for such further time as the court may authorize, on hearing, after notice to the surviving spouse, if any, and distributees. In either case no debts incurred or contracts entered into shall involve the estate beyond the assets used in such business immediately prior to the death of the decedent without the approval of the probate court first obtained. During the time the business is so continued, the executor or administrator shall file monthly reports in the probate court, setting forth the receipts and expenses of the business for the preceding month, and such other pertinent information as the court may require. The executor or administrator shall not have authority to bind the estate without court approval beyond the period during which the business is continued.”

Under the provisions of this section the administrator would not be authorized to continue the decedent’s business as a farmer for a period of time exceeding one month without the authorization and direction of the Probate Court on an order made and entered by the court for this purpose upon hearing after notice to the surviving spouse, if any, of such decedent and to the distributees of the property of the estate. Although the order of said court authorizing the administrator to enter into this lease, a copy of which is now attached thereto, does not recite that said court has theretofore made an order authorizing and directing the administrator to carry on the business of the decedent as a farmer for any particular length of time, I assume, in view of the order made by said court with respect to this lease, that the administrator has been authorized to continue the operation of decedent’s farm for some determined period of time. In any view

as to this fact it is quite unlikely that the court has authorized the administrator to operate this farm a period of fifteen years after his appointment and qualification as such administrator. As to this, it is noted as a consideration pertinent to the question of the administrator's authority to execute this lease on behalf of said estate as the named lessee therein, that Section 10509-9, General Code, provides that "The executor or administrator shall not have authority to bind the estate without court approval beyond the period during which the business is continued." In this case, the court by its order has authorized the administrator to enter into the lease here in question which is one for a stated term of fifteen years and which provides for an annual rental of \$36.00, as noted in the order of the court above quoted.

In view of the provision of Section 10509-9, General Code, above quoted, and of the order of the court which was apparently made pursuant to the authority of this section directing the administrator to enter into the contract here in question, I am inclined to the view that this lease, which is one executed by you under the authority of House Bill No. 144 enacted under date of April 19, 1929, 113 O. L., 524, may be sustained as one obligating the Estate of Mary D. Delaplane for the payment of the annual rentals therein provided. In this connection, it is to be observed that if on any view this lease and the provision therein for the payment of the annual rental for such lease are not the obligation of the estate, they are the personal obligation of the administrator. *Lucht, Adm., vs. Behrens*, 28 O. S., 231, 237; and in either view the state would be entitled to recover the amount of the rentals provided for in the lease.

In this situation, finding as I do that this lease instrument and the provisions and conditions therein contained are in conformity with the act of the General Assembly above referred to, under the authority of which the same is executed, and that this lease instrument has otherwise been executed as provided by law, the same is approved as is evidenced by my approval endorsed upon the lease instrument and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,

Attorney General.