

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of refunding bonds in the aggregate amount of \$207,000, dated October 1, 1933, bearing interest at the rate of 5% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2665.

APPROVAL—LEASE, STATE OF OHIO, THROUGH CONSERVATION COMMISSIONER, FOR CONSERVATION COUNCIL TO WOOD COUNTY PARK BOARD, STATE TRACT KNOWN AS "MARY JANE THURSTON PARK," IN GRAND RAPIDS TOWNSHIP, WOOD COUNTY, OHIO, FOR PARK AND RECREATIONAL PURPOSES.

COLUMBUS, OHIO, July 5, 1938.

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

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a certain lease indenture in triplicate executed by you as Conservation Commissioner for and on behalf of the Conservation Council to the Wood County Park Board as lessee; which lessee, as I am advised, is a metropolitan park board organized and existing under the authority of the provisions of Section 2976-1, et seq., General Code.

By this lease, which is one for a stated term of fifteen years and which provides for the payment of a nominal annual rental of one dollar, there is leased and demised to the lessee above named "for park and recreational purposes" the following described tracts of state property known as the "Mary Jane Thurston Park," and being a part of the Northwest Quarter of Section 7, Town 5 North, Range 9 East, Grand Rapids Township, Wood County, Ohio, and being more particularly described as follows:

Being 15.59 acres of land, more or less, north of I. C. H. No. 285, State Highway No. 65, U. S. Highway No. 24, in the west-half of Section 7, Town 5 North, Range 9 East, Grand Rap-

ids Township, Wood County, Ohio; beginning at the intersection of the north and south-half section line and the center line of said I. C. H. No. 285; thence North 1 deg. 41' West, on the said half section line, 610.2 feet to the State property line of the Grand Rapids Feeder; thence North 85 deg. 16' West, 606.7 feet to a point; thence North 7 deg. 39' West, 27.7 feet to a point in the center line of the dike on the bank of the Maumee River; thence North 84 deg. 30' West, 310.5 feet to the point of intersection of the west line of the Mary Jane Thurston tract, and the water line of the Maumee River; thence South 2 deg. 17' West, 858 feet to the center line of said I. C. H. No. 285; thence North 84 deg. 54' East, 550 feet, to a point; thence along said center line on a 9 degree curve to the left which radius is 637.28 feet; 103.33 feet to a point; thence North 72 degrees, 10' East, 284.55 feet to the place of beginning and containing, 15.59 acres of land—excepting therefrom the following described tract of land lying in the southeasterly corner of the above tract of land. Beginning at the intersection of the north and south half section line of said Section 7, and the center line of I. C. H. No. 285; thence North 1 degree, 41' west, on said one-half section line, 200 feet to an iron pipe; thence South 72 degrees, 10' West, 350 feet to an iron pipe; thence South, 1 degree, 41' East, parallel to said one-half section line, 197.3 feet to the center line of said I. C. H. No. 285; thence along the arc of a 9 degree curve to the left on a radius of 657.28 feet and is tangent to the last named point to a line which bearing is North 77 degrees, 57' East; 64.29 feet; thence North 72 degrees, 10' East, 284.53 feet to the place of beginning and containing 1.54 acres, more or less, being a part of the lands formerly owned by Mary Jane Thurston.

Also a certain tract of land beginning at a point in the center line of I. C. H. No. 285, U. S. Highway No. 24, that is 933.9 feet westerly as measured along said center line of said highway from the north and south half section line of Section 7; thence North 2 degrees, 17' East, 858 feet to the low water mark of the Maumee River; thence following the said low water mark of the Maumee River, South 81 degrees, 37' West, 193.4 feet to a point; thence North 76 degrees, 32' west, 403.2 feet to a point; thence South 2 degrees, 17' West, 970.6 feet to the center line of said I. C. H. No. 285; thence in an easterly direction along the arc of a 4 degree curve to the left (radius 1432.68') in the center line of said road, 173.7 feet

to the point of tangency to a line which bearing is North 84 degrees, 54' East; thence further along said center line, North 84 degrees, 54' East, 416.6 feet, to the place of beginning and containing twelve (12) acres of land. Excepting and reserving to the grantors, their heirs, assigns, tenants, licenses and all persons for the benefit or advantage of the grantors, a right of way over, across and upon the above described lands for the purpose of having and obtaining ingress and egress to the grantors' lands which are located west and adjacent to the above lands—being a part of the lands formerly owned by Henry T. Kecheley, et al.

The above described tracts of land, I assume, were acquired by the Conservation Council for and in the name of the State of Ohio under the authority conferred upon the Conservation Council by Section 472, General Code, which section, among other things, provides 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 and resorts. And this property, having been so acquired, is now being leased and demised to the Wood County Park Board, it is assumed, under the authority of Section 472-1, General Code, which provides as follows:

“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, lease and sale of swamp, marsh, overflow lands and all other lands within the state to which the state has or should have the title, except canals and public works and institutional lands, but no land lease or sale of lands shall be made except upon the written approval of the governor and the attorney general.”

This section, it will be noted, does not in affirmative and express terms authorize the Conservation Council to lease other lands of the State of Ohio which are under its control; however, this section in providing that no land lease or sale of lands shall be made by the Conservation Council “except upon the written approval of the governor and the attorney general,” quite clearly, in my opinion, implies the authority of the Conservation Council to execute a lease of such lands with the approval of the Governor and the Attorney General.

Looking to the provisions of Section 2976-7, General Code, relating to the power and authority of the Wood County Park Board, as a metropolitan park district, to acquire lands, it is noted that although the section does not in terms grant to a metropolitan park board authority to acquire lands by lease *eo nomine*, this section does provide that "either the fee or any lesser interest may be acquired as the board may deem advisable and the provisions of this section shall apply to districts heretofore created." I am of the view, therefore, that not only may the Conservation Council, acting through you as Conservation Commissioner, execute a lease of lands which are owned by the State under the jurisdiction and control of the Conservation Council, but that the Wood County Park Board, as a metropolitan park district, may acquire lands by lease in this way. Inasmuch as there is nothing in Section 472-1 or in any other section of the General Code relating to the powers and duties of the Conservation Council, which limits the term of leases executed by the Conservation Council under the authority of the section of the General Code above referred to and, likewise, there is nothing in Section 2976-7 or in any other section of the General Code which fixes the term for which a metropolitan park board can acquire land by lease, it follows that a lease of this kind for the purpose above stated can be executed for any reasonable term of years, having in mind the purpose to be served by the lease. From other information at hand, it appears that the tracts of land above described have heretofore been held and used for recreational park purposes by said lessee under a short term lease executed to it by the Conservation Council; and that this lease is a renewal of the lease now or formerly held by said lessee. It further appears that, acting under the former lease executed to it, the Wood County Park Board has expended a considerable sum of money in developing and improving this land for park purposes and that it is the intention of said board to further develop and improve the property and to expend moneys in the acquisition of lands contiguous to those above described for use as a part of this park. In view of these facts, I cannot say as a matter of law that the Conservation Council in fixing the term of this lease as one for fifteen years acted unreasonably and still less can it be said that the parties to this lease in executing this instrument were actuated by any considerations inconsistent with perfect good faith upon their part.

As above noted, the annual rental provided for in this lease is the nominal sum of one dollar. This provision suggests the question of the authority of the Conservation Council to execute a lease of this kind in consideration of the payment of an annual rental other than such as may have some proper relation to the value of the property leased. Although there is no statutory provision which directly or indirectly determines the amount of the rental to be paid by a lessee of state lands under the

control of the Conservation Council, it is apparent that in some instances leases executed by the Conservation Council of state lands in consideration of the payment of merely nominal rentals might properly be considered as invalid by reason of the abuse of discretion reposed in the Conservation Council with respect to the release of state lands under its control. However, in this connection, it is to be recalled that under the provision of Section 472, General Code, which authorizes the acquisition of these lands by the Conservation Council for and in the name of the State of Ohio, such lands were acquired for park purposes; and the effect of this lease is to confer and impose upon the Wood County Park Board the authority and duty of maintaining and using these lands for park purposes under rules and regulations to be approved by the Conservation Council. In this situation, the Wood County Park Board, as the lessee named in this lease instrument, will be using this property for the same purpose and in the same way that the Conservation Council would be required to use the property if this lease had not been executed; and the only difference in the situation is that the lessee above named will now be required to make such expenditures as may be necessary to maintain this property in proper condition for recreational park purposes. And this consideration, aside from the fact that this park board is, perhaps, better able to maintain and use this property for its intended purpose than is the Conservation Council, fully justifies the action of the Conservation Council in executing this lease for the nominal rental therein provided for. In this connection, it is noted that in other legislation and with respect to other lands of the State the legislature has declared the policy of the State with respect to the lease of such lands for park purposes by providing that when such lands are leased to municipalities, other political subdivisions or to metropolitan park boards such leases may be executed in consideration of the payment of a nominal rental.

Upon the considerations above noted, I am inclined to the view that the Conservation Council was authorized to execute the lease here in question on the terms and conditions therein provided for; and inasmuch as said lease has been properly executed for and in the name of the State of Ohio by the Conservation Council, acting by the hand of the Conservation Commissioner, and by the lessee above named, I am hereby 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.