

It will be observed that by the terms of Section 3799, supra, council is limited in making transfers to transfers of moneys raised by taxation upon all the real and personal property in the corporation and to funds which are not proceeds of special levies, bond issues or loans.

As the funds which make up a sinking fund or bond payment fund are either the proceeds of special levies, bond issues or loans, or funds derived from sources other than taxation on all the real and personal property within the corporation, a municipal council would have no authority at any time to transfer from these funds to another fund by virtue of Section 3799, General Code.

The transfer contemplated by Sections 2296 et seq., is limited only to the extent that the proceeds or balances of special levies, loans or bond issues can not be transferred but this section does not provide as does Section 3799, General Code, that transfers can be made only among funds raised by taxation upon all the real and personal property in the corporation.

If it can be shown that a balance remaining in a sinking fund or bond payment fund consists of funds *other* than the proceeds or balances of special levies, loans or bond issues and there are no obligations to be liquidated by the use of said funds, it is my opinion that transfers of such funds may be effected prior to January 1, 1928, by order of the common pleas court in accordance with the procedure provided for by Sections 2296 et seq., of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

970.

CANAL LANDS—LEASES—RAILWAY COMPANIES WHOSE TRACKS
CROSS CANAL LANDS—ABANDONED CANAL LANDS TO BE LEASED
TO CITY OF DAYTON.

SYLLABUS:

1. *Railway companies whose tracks cross canal lands abandoned by the legislature by act of the General Assembly (111 O. L. 208) which did not have leases from the state for the lands occupied in crossing, are not now entitled to leases therefor from the state.*

2. *All lands abandoned by the Act of the General Assembly (111 O. L. 208), for which the city of Dayton has applied for a lease, should be appraised at their true value in money. Also all existing leases on such lands, other than ones surrendered under the provisions of the Act and new leases given thereon, should be appraised at their true value in money for any purpose for which the land can be used.*

COLUMBUS, OHIO, September 8, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date in which you say:

“A difference of opinion exists between the members of the Appraisal Board appointed by the Governor to appraise the abandoned Miami and Erie

Canal Lands within the City of Dayton and the representatives of the city authorities.

The principal difference of opinion is as to the method to be pursued by the Appraisal Board in appraising the existing leaseholds.

House Bill No. 162, as passed by the 86th General Assembly of Ohio, abandons the Miami and Erie Canal for canal purposes between Defiance and the Middletown Dam in Butler County, Ohio.

Section 7 of the Act provides for the appointment of the Board of Appraisers and defines their duties, and after providing for the appraisal of the lands that are not under existing leases, also provides for the appraisal of all of the existing leases upon said canal and feeder lands, basins, wide waters, state lots, within the limits of the application as applied for by the municipalities or other legal subdivisions of the state at their true value in money.

Section 9 of the abandonment act provides that the owners of existing leaseholds for canal lands, which prior to January 1, 1925, have been improved by the construction of railway tracks thereon, and by the erection of substantial buildings thereon, other than buildings erected for the use of gas and oil filling stations, may file an application within one year from the date from which this act becomes effective, with the Superintendent of Public Works for permission to surrender his present leasehold and take a new lease thereon under the terms of this act, but no renewal of leases of canal property which has not been improved, as hereinbefore stated prior to January 1, 1925, shall be made.

This section also provides for the assignment of such leaseholds when renewed to municipalities making an application to lease for canal lands within its corporate limits.

These existing leases embrace two classes of canal land occupancy; one of which is leases made direct from the State to the lessee, but by an act of the General Assembly of Ohio passed March 30, 1875 (O. L. 72, p. 175), and also an Act of the General Assembly passed April 26, 1877 (O. L. 74, p. 473), respectively, authorizing the city of Dayton to lower the bridges over the Mad River Feeder Canal and authorizing the city to grant similar privileges to railroads crossing said feeder.

These railroads have never had any lease from the State of Ohio, but conceding that their occupancy was legal under these statutes, we ask you to advise this department whether or not these railroad companies are entitled to leases under the provisions of the Act of Abandonment.

There are other railroad crossings where the occupancy has been by virtue of the general statute, authorizing railroads to cross canals and other navigable bodies of water within the limits of the State of Ohio, as a necessary adjunct to a continuous right-of-way.

The only conditions imposed upon such railroad companies were that they submit plans to the Board of Public Works or its chief engineer for approval, and that such railroad crossing should have a net clearance of ten (10') feet between the top water line of the canal at standard level and the bottom of the overhead bridge structure.

Since these companies are legally occupying these right-of-way crossings over the canal, we wish to be advised whether or not they are entitled to leases under the terms of the Act of Abandonment.

These crossings are absolutely essential to the continuous operation of these railroad companies, but since they are now permitted to lower their bridges to grade, should the right-of-way be appraised and leases issued to said companies, and then assigned to the city of Dayton at the appraisal as determined by the Board of Appraisers?

Owing to the numerous leases that existed other than for railway right-of-way, it becomes quite important that the Board of Appraisers adopt some rule, if permitted to do so, that it will be equitable both to the state and the city of Dayton in the appraisal of such leases.

A more numerous class of existing leases are those that have been granted to individuals and to manufacturing corporations, and the method of making these appraisements have come up for consideration as to how they shall be appraised.

We can perhaps illustrate the question under consideration as follows :

Suppose a lease for canal land was granted by the State of Ohio for a term of fifteen (15) years from the first day of May, 1913, and will therefore expire on the 1st of May, 1928. The rental has been paid six months in advance to November 1, 1927.

It is proposed either to lease or sell the land described in the lease to the city of Dayton. How shall it be appraised in order to be fair both to the state and the city?

It has been the practice of the Public Works Department when a lease is surrendered to the State of Ohio, under the provisions of Section 13965 of the General Code, for the purpose of having the land described therein included in a new lease, to compute the rental first for the unexpired portion of the lease at the old rate of rental, which was six per cent of the appraised value thereof at the date of the granting of the original lease; second to compute the rental on the new lease, at 6% of the appraised value of the canal land embraced in the same at the date of such renewal, but not for a less rental than that stipulated in the original lease.

The aggregate rental for the unexpired portion of the old lease added to the aggregate rental on the appraised value of the new lease, computed for fifteen (15) years, less the time that would have elapsed before the expiration of the old lease, and this sum divided by fifteen (15), gives the average annual rental for the new lease.

The following is submitted to illustrate the method used in the Division of Public Works where the lessee and the state are the only parties interested :

'A' was granted a lease by the state of Ohio, of canal lands, for a term of fifteen (15) years at an appraised value of sixteen thousand and six hundred and sixty-six dollars and sixty-seven cents, (\$16,666.67) and the rental of one thousand (\$1,000.00) dollars, thereon has been paid to November 1, 1927, the date at which the new lease is to become effective.

The old lease would have expired May 1, 1932, and would have run four (4) years and six (6) months longer under the old lease, the annual rental on which was one thousand (\$1,000.00) dollars. Hence the old lease would have earned forty-five hundred (\$4,500.00) dollars, for the unexpired portion of the old lease.

Deducting the four and one-half ($4\frac{1}{2}$) years from the full term of fifteen (15) years, we have ten and one-half ($10\frac{1}{2}$) years for which the rental should be paid upon the new appraisal, which for the purposes of this il-

lustration we may fix at fifty thousand (\$50,000.00) dollars, the annual rental of which at 6% will be three thousand (\$3,000.00) dollars, and for ten and one-half (10½) years, will amount to thirty-one thousand, five hundred (\$31,500.00) dollars, which added to the rental computed for four and one-half (4½) years, at the rate of one thousand (\$1,000) dollars a year, aggregating forty-five hundred (\$4500.00) dollars, gives a total rental for the entire fifteen (15) year period of thirty-six thousand (\$36,000.00) dollars. Thirty-six thousand (\$36,000.00) dollars divided by fifteen (15) equals an average annual rental of two thousand, four hundred (\$2,400.00) dollars.

By this method the lessee or his successor, in this case the city of Dayton, gets the benefit of the cheaper rental for four and one-half (4½) years, while the State of Ohio gets the benefit of the increased value of said canal property, and consequent increase in the rental for ten and one-half (10½) years.

Mr. Booton of this department, who has given the matter much thought, is of the opinion that the rule thus formulated for the guidance of the Department in appraising canal lands, for either lease or sale under the general statutes governing the leasing and selling of state canal lands, is equally applicable to the leasing and selling of the abandoned Miami and Erie Canal lands, under the provisions of House Bill No. 162, (O. L. 111, p. 208) as passed by the 86th General Assembly, and by the subsequent act of the 87th General Assembly, as found in House Bill No. 173, providing for the sale of the abandoned Mad River Feeder Canal to the City of Dayton, Ohio. This canal was to be leased instead of sold under the first Stevens Bill. The last act provides that the sale of the Mad River Feeder Canal Lands shall be made on the appraisement, as determined by the appraisers appointed by the Governor to appraise the lands applied for by the City of Dayton for lease under the provisions of House Bill No. 162 of the 86th General Assembly.

There is quite a difference of opinion between the Division of Public Works and the authorities of the City of Dayton as to how the canal lands covered by existing leases shall be appraised.

The representatives of the city would like to appraise the existing leases, either at the old appraisement in such leases, or discount this appraisement if the period still to run is short.

In discussing this feature of the appraisement of lands in the City of Dayton, Mr. Booton and I are inclined to the opinion that the method of appraisement is a matter for the Appraisal Board to determine for itself so long as the rule is reasonable, since no rule of law governing such appraisements has ever been enacted by the General Assembly.

Section 10 of the abandonment act referred to above, pretty thoroughly defines, in a general way, what disposition shall be made of leases for canal lands that were granted prior to the enactment of House Bill No. 162, as passed by the 86th General Assembly, and plainly states that such existing leases *shall be appraised at their true value in money for any purpose for which the land therein described can be used.* This plainly indicates that it is the land that is to be appraised and not the leasehold estate as chattel property, the value of which would decrease each year as the end of the leasehold period approaches.

Kindly render us an opinion as to how the Appraisal Board may proceed in appraising the existing leaseholds covering a portion of the canal lands within the city of Dayton."

Briefly, you ask two questions :

(1) Are railroad companies, whose tracks cross the abandoned canal lands within and adjacent to the city of Dayton, now entitled to have leases from the state for the lands thus occupied?

(2) In the appraisal of those canal lands and existing leaseholds thereon, what method should be used by the appraisal board to determine their true value in money?

With reference to the first question, it should be pointed out that the railroads involved may fall within at least three classes:

1st. Railroad companies which have leases from the State of Ohio for the land upon which their tracks are located.

2nd. Railroad companies which are exercising the right granted to them by Sections 8775 and 8776 of the General Code. By these sections the railroad companies were authorized to construct bridges across canals, the only requirement being that the plan of the bridge and other fixtures therefor shall be submitted to and approved by the Board of Public Works.

3rd. Railroad companies which are exercising the rights granted by the act of April 26, 1877 (74 O. L. 473), which authorizes the city of Dayton to grant the railroad companies the privilege to build a bridge across the Mad River Feeder of the Miami and Erie Canal.

Such railroads as fall within the first class, to-wit, those having leases from the State of Ohio, are entitled to renewal leases if they have applied for the same within the time specified in the 1925 act.

The railroads embraced in the second and third classes are not holders of leaseholds and are, therefore, not entitled to renewal leases under the provisions of Section 9 of the 1925 act.

With reference to the second question above set out, your attention is called to the provisions of Section 7 and Section 10 of the act of 1925. Section 7 provides that the appraisers shall appraise the portions of said abandoned canal lands applied for by municipalities at their true value in money. Said section also provides that said appraisers shall appraise all the existing leases upon said canal lands at their true value in money. The 1925 act does not authorize or direct the appraisers to take into consideration existing leases in making their appraisal of the canal lands.

In the matter of the appraisal of existing leases, it will be observed that there are two classes of leases embraced within the provisions of the act of 1925, first, renewal leases executed under the provisions of Section 9 of the act and, second, leases executed under the provisions of statutes enacted prior to the 1925 act.

As to the first class of leases, Section 9 authorizes the superintendent of Public Works to assign such leases to the municipality making application to lease the canal lands, and there is no requirement for the payment of any additional rental therefor. Since the underlying fee will have already been included in the appraisal of the land, no further appraisal is necessary.

However, with reference to the second class of leases, it is provided in Section 10 of the 1925 act that such leases must be appraised at their true value in money for "purposes for which the land therein described can be used" and if such leases are assigned to the municipality making the application, an additional rental of 4% must be paid upon such appraisal. It is clear, therefore, as to this class of leases, the appraisal must be made upon the present lease value of the land without regard to the appraisal upon which the existing lease may be based.

The result of this method of appraisal will be that if the city of Dayton desires to avail itself of the provisions of the act, it must pay to the State of Ohio 4% of the appraised value of the land. So far as the portions of the land covered by the renewal leases is concerned, the city of Dayton will more than recoup, because the rental for

the land is fixed at 4%, whereas the rental in the renewal leases is fixed at 6%, and, as pointed out above, the city is not required to pay to the state any rental on these renewal leases.

As to the other class of leases, the city of Dayton must pay the rental to the state upon the appraised value of the land, notwithstanding the state may be collecting rent under the unexpired leases. While Section 10 provides that these unexpired leases may be assigned to the city of Dayton, yet if they are so assigned the city of Dayton will be required to pay an additional rental upon the appraised value of the leases. It is difficult to see how there will be any advantage to the city of Dayton in taking an assignment of these unexpired leases. It is entirely probable that the general assembly did not intend to create such a situation, but I am unable to find any authority in the act for any other conclusion.

Respectfully,
EDWARD C. TURNER,
Attorney General.

971.

APPROVAL, BONDS OF MEAD TOWNSHIP, BELMONT COUNTY—
\$18,000.00.

COLUMBUS, OHIO, September 8, 1927.

Retirement Board; State Teachers Retirement System, Columbus, Ohio.

972.

ARREST ON SUSPICION—CHARGE MUST BE FILED BEFORE PROPER
COURT OR MAGISTRATE WITHIN REASONABLE TIME—COST OF
FEEDING SUCH PRISONERS WHO ARE HELD—COUNTY JAIL.

SYLLABUS:

1. *It is unlawful to arrest a person "on suspicion," that is, because it is suspected that such person may have committed a crime or offense, and imprison such person in the county jail for a longer period of time than is reasonably necessary under the circumstances for a charge to be filed before the proper court or magistrate and a legal warrant and commitment obtained. Where one is so arrested and held for a longer period without such writ or other authority from a competent court or magistrate, he has a right of action for false imprisonment against the officer or person who made the arrest and those by whom he has been so unlawfully held in custody.*

2. *A board of county commissioners is without authority to make allowances to sheriffs for the keeping and feeding of persons confined in the jail at the instance of arresting officers and other persons lawfully making arrests, for a longer period than*