

the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1489.

APPROVAL—WATER LEASE EXECUTED BY THE STATE OF OHIO THROUGH THE SUPERINTENDENT OF PUBLIC WORKS TO THE AUGLAIZE BOX BOARD COMPANY OF ST. MARYS, OHIO.

COLUMBUS, OHIO, November 19, 1937.

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

DEAR SIR: You have submitted for my examination and approval a water lease, so-called, executed by you as Superintendent of Public Works for and in the name of the State of Ohio, to The Auglaize Box Board Company, St. Marys, Ohio. By this lease instrument the lessee therein named is given the right to insert into the level of the Miami and Erie Canal at a point above Lock No. 12 north of the Loramie Summit, a pipe, the required dimensions of which are not stated, and to thereby draw from said canal such amount of water as said lessee, The Auglaize Box Board Company may need for the purpose of generating steam and for fire protection on its premises.

This lease, which is one for a term of five years from November 1, 1937, provides for an annual rental to be paid by said lessee for the water so used by it in the sum of \$640.00, payable in semiannual installments of \$320.00 each on the first days of May and November in each of the years during the term of said lease.

The lease here in question is one executed under the authority conferred upon you by Section 14009, General Code, which section provides in part as follows:

“Whenever, in the opinion of the superintendent of public works, there shall be any surplus water in any of the state canals, or in any of the feeders, or reservoirs, or at any dams created by the state for the purpose of supplying any of said canals

with water, or erected for improving the navigation of any river, over and above the quantity of water which may be required for the purpose of navigation, said superintendent of public works may sell or lease the right to use such surplus water for hydraulic or other purposes, for any term not exceeding twenty-five years for a certain annual rental, or otherwise, as he may deem most beneficial for the interests of the state, subject to such conditions, reservations and restrictions as he may deem necessary and proper. All rentals shall be fixed by the superintendent of public works with the approval of the governor and attorney general."

Upon a consideration of the terms and provisions of this lease, I find that the same are within the authority conferred upon you by the section of the General Code above quoted. The only other matters in connection with this lease which require my consideration are the execution of the lease and the amount of the rental therein provided for. Upon examination of the lease, I find that the same has been properly executed by you as Superintendent of Public Works, acting for and on behalf of the State of Ohio, and by The Auglaize Box Board Company, acting by the hand of its President pursuant to a resolution of the Board of Directors of said company duly adopted under date of September 9, 1937.

With respect to the rental to be paid by said lessee for the use by it of the water provided for in the lease and during the term thereof, it is to be observed that this is a matter to be determined by you in the first instance, and I do not think that either the Governor or the Attorney General would be justified in disapproving your determination with respect to the rental to be paid under the lease unless it appears that the amount of rental provided for in the lease is manifestly inadequate. There is nothing in the provisions of this lease to suggest that the amount of rental provided for in this lease is not an adequate compensation for the amount of water which the lessee will use for the purposes above stated and in this view, I am of the opinion that this lease should be approved as is indicated by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof.

Respectfully,

HERBERT S. DUFFY,

Attorney General.