

legislature and with other related statutes. I am, therefore, approving this lease, 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.*

3016.

APPROVAL—LEASE, CANAL LANDS, DEPARTMENT OF PUBLIC WORKS WITH BOARD OF EDUCATION OF DEFIANCE CITY SCHOOL DISTRICT, DEFIANCE, DEFIANCE COUNTY, OHIO, NINETY-NINE YEARS, PORTION MIAMI AND ERIE CANAL, LOCATED IN DEFIANCE, TO OCCUPY AND USE FOR ELEMENTARY SCHOOL BUILDING.

COLUMBUS, OHIO, September 27, 1938.

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

DEAR SIR: You have submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works on behalf of the State of Ohio to the Board of Education of Defiance City School District, Defiance, Defiance County, Ohio.

This lease, which is one for a term of ninety-nine years, renewable forever, and which provides for an annual rental of \$36.00 during the first fifteen-year period of the term of the lease with a provision for reappraisal of the property leased at the end of each fifteen-year period of said term for the purpose of determining the annual rental to be paid during each succeeding fifteen-year period of said term, there is leased and demised to the lessee above named the right to occupy and use for elementary school building, athletic field and playground purposes that portion of the abandoned Miami and Erie Canal property, including the full width of the bed and banks thereof, located in the City of Defiance, Defiance County, Ohio, and described as follows:

Beginning at the point of intersection of the northeasterly line of said canal property and the northerly line of Thurston Street in said city, said northerly line of Thurston Street crossing the transit line of the S. A. Buchanan Survey at Station 2959+13, and running thence northeasterly with the said northeasterly line five hundred thirty-five (535') feet, more or less,

to the northerly line produced across said canal property of Lot No. 6, of Phillips Addition to the city of Defiance, said northerly line of said lot No. 6, produced, crossing said transit line at or near Station 2953+78; thence northwesterly with the said northerly line of said lot No. 6, produced, eighty-six (86') feet, more or less, to the northeast corner of a lease granted to The H. B. Tenzer Lumber Company under date of December 23, 1927; thence southwesterly with the northeasterly line of the said Tenzer Lumber Company lease, two hundred (200') feet, more or less, to the southeasterly corner of the said Tenzer Lumber Company lease; thence northwesterly with the southerly line of said Tenzer Lumber Company lease thirty (30') feet, more or less, to the southwesterly line of said canal property; thence southwesterly with the said southwesterly line of said canal property three hundred thirty-five (335') feet, more or less, to the northerly line of Thurston Street in said city; thence southeasterly with the northerly line of Thurston Street one hundred nine and seven-tenths (109.7') feet, to the place of beginning, and containing fifty-three thousand, one hundred six (53,106) square feet, more or less.

Involved in the question of the validity of this lease is a consideration of your statutory power and authority to execute the lease as well as consideration of the power and authority of the Board of Education of Defiance School District to acquire property for school purposes by lease of this kind. Your authority to execute this lease on behalf of the State of Ohio is found in the provisions of Section 19 of the Act of April 29, 1931, known as the DeArmond Act, 114 O. L., 546, and in the more general provisions of the Act of April 22, 1931, known as the Farnsworth Act, 114 O. L., 518. The DeArmond Act, here referred to, provides generally for the release of such Miami and Erie Canal lands between the points therein designated as are not taken over by the Director of Highways for highway purposes or leased to municipal corporations or other political subdivisions for park purposes. Although this act authorizes the lease of such lands for a term of ninety-nine years, renewable forever, there is nothing in the provisions of this act which provides for a reappraisal of such lands at the end of each fifteen-year period of the term of the lease for the purpose of determining the annual rental to be paid for the property subsequent to the first fifteen-year period of such term. However, the Farnsworth Act, above mentioned, provides that leases granted for a longer term than fifteen years shall contain a clause providing for a reappraisal of the canal lands described in such leases, by proper state authority, at the end of each

fifteen-year period, embraced in such leases, and that the annual rental therefor shall be six per cent of the appraised value thereof for each period. Upon examination of this lease, I am of the opinion that said lease and the provisions thereof are within the authority conferred upon you as Superintendent of Public Works with respect to leases of this kind, by the acts of the legislature above noted.

I am likewise of the view that the Board of Education of Defiance City School District is authorized to acquire this property for the purposes above stated by a lease of this kind and for the term therein provided for. Under the provisions of Section 4749, General Code, the board of education of a school district is a body politic and corporate and as such is empowered to acquire, hold and possess real property. Inasmuch as this lease executed to the Board of Education of Defiance City School District creates in said school district a freehold estate in the lands described in the lease (*Ralston Car Company, vs. Ralston*, 112 O. S., 306), the provisions of Section 4749, General Code, above noted, are probably sufficient in themselves to authorize the Board of Education of said school district to acquire this property by lease for the term above stated. Moreover, Section 7620, General Code, relating more specifically to the power and authority of a board of education to acquire property for school purposes, provides, among other things, as follows:

“The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children.”

As above noted, the Board of Education of Defiance City School District is acquiring this property “for elementary school building, athletic field and playground purposes;” and in this view, there is no question in my mind as to the authority of the school district to acquire this property for these purposes by means of the lease here under consideration.

It appears further, from an examination of this lease instrument, that the same has been properly executed by you as Superintendent of Public Works and as Director of said department, acting for and in the name of the State of Ohio, and by the Board of Education of Defiance City School District, acting by the hand of its President pursuant to the authority of a resolution of the Board of Education of said school district duly adopted under date of August 29, 1938.

Upon the considerations above noted, I am accordingly approving this lease as is evidenced by my approval endorsed thereon and upon

the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3017.

APPROVAL—LEASE, CANAL LANDS, DEPARTMENT OF PUBLIC WORKS WITH CITY OF ST. MARYS, OHIO, RIGHT TO TAKE WATER FROM LEVEL OF MIAMI AND ERIE CANAL BETWEEN LOCKS 12 AND 13, AT ST. MARYS FOR POWER PLANT PURPOSES, TERM OF FIVE YEARS, ANNUAL RENTAL \$400.00.

COLUMBUS, OHIO, September 27, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, 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 in triplicate executed by you as Superintendent of Public Works on behalf of the State of Ohio, and the City of St. Marys, Ohio, in and by which said city is granted the right to take water from the level of the Miami and Erie Canal between Locks 12 and 13 at St. Marys, Ohio, for power plant purposes, for a term of five years.

As a consideration for the right and privilege so granted, the City of St. Marys, Ohio, as the party of the second part in the contract, agrees to pay to the State of Ohio an annual rental of \$400.00, payable in semi-annual installments of \$200.00 each, which annual rental is predicated on an average amount of 114,285,428 gallons per year, and is based on a rate of three and one-half mills per thousand gallons. In this connection, I am advised that most of the water to be taken by the City of St. Marys from the Miami and Erie Canal at this point for the purpose above stated is to be returned to the canal; and, in this situation, I am likewise informed that a rate of three and one-half mills per thousand gallons is the usual rate charged for water where all or the greater part of the water taken is returned to the source of supply.

This lease is one executed by you under the authority of Section 14009, General Code, and assuming that this water will not be needed for primary state purposes, this lease and its provisions are clearly within the authority of this section of the General Code.

This lease has been properly executed by you as Superintendent of