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APPROVAL—LEASE, STATE OF OHIO, THROUGH SUPERINTENDENT OF PUBLIC WORKS, WITH FORD MOTOR COMPANY, DEARBORN, MICHIGAN, FIVE YEAR TERM, AGGREGATE RENTAL \$125,000.00, PROPERTY CORNER CLEVELAND AND BUCKINGHAM AVENUES AS DESCRIBED, CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO, FOR USE OF UNEMPLOYMENT COMPENSATION COMMISSION, COLUMBUS, OHIO.

COLUMBUS, OHIO, October 17, 1938.

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

DEAR SIR: You have submitted for my examination and approval a certain lease in quadruplicate executed by the Ford Motor Company of the City of Dearborn, Michigan, as lessor, to the State of Ohio, acting by and through you as Superintendent of Public Works and as Director of said department. This lease, which is one for the use of the Unemployment Compensation Commission, leases and demises to the State of Ohio as the lessee therein named certain lands and premises situated in the City of Columbus, County of Franklin and State of Ohio, and more particularly described as follows:

“Being a four acre tract of land, more or less, located at the N/W Corner of Cleveland and Buckingham Ave. of approximately 277 feet and a depth of approximately 665 feet, including the buildings and improvements thereon, known as No. 427 Cleveland Ave.”

By this lease, which is one for a term of five years from the first day of November, 1938, and which provides for an aggregate rental of \$125,000, payable in installments during the life of the lease in the several stated amounts therein specified, effects a lease and demise of the above described premises for the uses and purposes above stated, with the additional provision therein contained that concurrently with the payment of the several installments of rent therein provided for the lessee shall repay and reimburse the lessor for certain expenditures which under this lease contract the lessor is required to make in improving the building and its interior arrangement and equipment so as to make the premises suitable for the use of the Unemployment Compensation Commission and its employes.

This lease is executed by you in your capacity as Superintendent of Public Works and as Director of said department for and in the name of the State of Ohio pursuant to the authority conferred upon you for this purpose by Section 154-40, General Code, which, among other things, provides that the Department of Public Works shall have the power "to lease office space in buildings for the use of the state government, or any department, office or institution thereof."

On examination of this lease instrument and the conditions and restrictions therein contained, I find that these provisions are such in the main as have proper relation to the purposes sought to be accomplished by the parties to the lease in the execution of the same. The only features of this lease which require any particular consideration are those with respect to the term of the lease and to the obligation imposed upon the lessee to make payment of the rental installments during the term of the lease which, as will be noted, extends beyond the legislative biennium in which this lease is executed. Without here noting the constitutional provisions the consideration of which is suggested in this situation, it may be observed in light of the case of *State, ex. rel. Ross vs. Donahey*, 93 O. S. 414, in which the pertinent constitutional provisions were considered and construed, that you are authorized to execute the lease here in question for and in the name of the State of Ohio although it is for a period of longer than two years, since this lease both by its provisions and by implication of law is subject to the provision that the legislature shall make appropriations covering the rentals and other obligations to be paid by the lessee as therein provided for. In this connection, it is to be noted that the rent payment in installments under a lease of this kind has the character of current expenses so far as the lessee is concerned; and, in my opinion, the same can be said of the moneys to be paid by the lessee under the terms of the lease in reimbursing the lessor for making such changes, improvements and repairs in and upon the building leased as will make the same suitable for the use of the Unemployment Compensation Commission of the State and its employes; for all of these changes and improvements are, in my view, such as the department itself might make as a matter of maintenance and repair.

In this view, the obligation imposed by this lease instrument upon the lessee to make the installment payments of rent and other charges therein provided for is a current expense of the state and of the department concerned rather than a debt within the meaning of Section 3 of Article VIII of the State Constitution, which provides that except as to the debts provided for by Sections 1 and 2 of said

article "no debt whatever shall hereafter be created by, or on behalf of the State." *State, ex rel. Ross vs. Donahcy*, supra.

Entertaining this view as to the terms and provisions of this lease and finding, as I do, that the lease instrument has been properly executed and acknowledged by the Ford Motor Company, acting by Edsel B. Ford, its president, and by the State of Ohio, acting through you as Superintendent of Public Works and as Director of said department, pursuant to the authority conferred upon you by law with respect to the execution of leases of this kind, I am hereby approving this lease as to legality and form, subject only to the condition that the Ford Motor Company by some authorized representative and agent approves and initials the deletion of paragraph 9 of the lease as originally drafted and likewise approves and initials the riders which have been attached to this lease since the same was executed by the lessor. It is pertinent, perhaps, to here note that this lease instrument in its present form has been approved by the authorized representatives of the Social Security Board at Washington, acting under the general authority conferred upon said board by the Social Security Act.

With this lease, you submit for my examination and approval Contract Encumbrance Record No. 21. This Contract Encumbrance Record has been properly executed and the same shows a sufficient amount of money, otherwise unencumbered, to pay the rental provided for in this lease for the months of November and December, 1938. This, in my view, is a sufficient compliance with the provisions of Section 2288-2, General Code, and said Contract Encumbrance Record is approved.

Respectfully,

HERBERT S. DUFFY,
Attorney General.