

said lands to one R. B. Stuart, that the only authority now reposed in you with respect to the sale of these lands is that conferred by the provisions of the Act of April 19, 1929, 113 O. L., 521. Assuming, as I do, that the parcel of land here in question has not been sold or leased to any other person or corporation, I am of the opinion that you have authority to make this sale under the provisions of the act of the legislature above referred to.

Upon examination of this transcript, I further find that you have made a finding of the facts upon the existence of which your authority to make this sale is predicated. And inasmuch as your proceedings relating to this sale appear to be in all respects regular, I am approving the same as is evidenced by my approval endorsed upon the transcript of your proceedings and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3046.

APPROVAL — SALE, PARCEL ABANDONED HOCKING  
CANAL LANDS IN NELSONVILLE, OHIO, TO R. B.  
STUART AT A PRICE OF \$450.00.

COLUMBUS, OHIO, October 4, 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 an abstract of your proceedings as Superintendent of Public Works of Ohio relating to the sale to one R. B. Stuart of a parcel of abandoned Hocking Canal lands in the city of Nelsonville, Ohio, which parcel of land is more particularly described as follows:

Beginning at a point in the east line of Fulton Street in said city, 64.5 feet north  $7^{\circ} 27'$  east, from station 2153+99 on the transit line of Bruce Doughton's Survey of said canal property; thence north  $7^{\circ} 27'$  east, eighteen and nine-tenths (18.9') feet to a point, same being seventy-eight and seven-tenths (78.7') feet southwest of the northerly line of an alley running parallel with the southerly line of Columbus Street; thence south  $69^{\circ} 50'$  east, one hundred fifteen and nine-tenths

(115.9') feet to a point; thence south  $66^{\circ} 45'$  east, two hundred sixty (260') feet to a point; thence south  $67^{\circ} 32'$  east, one hundred twenty-four (124') feet to a point; thence south  $71^{\circ} 54'$  east, five (5') feet to a point; thence south  $4^{\circ} 36'$  west, thirty-two and seven-tenths (32.7') feet to a point; thence north  $66^{\circ} 15'$  west, five hundred ten and five-tenths (510.5') feet to the place of beginning and containing thirteen thousand two hundred forty-nine and forty-three hundredths (13,249.43) square feet, more or less.

The sale of the above described property, which is in consideration of the sum of \$450.00 to be paid therefor by said R. B. Stuart to the State of Ohio, is under the assumed authority of an Act of the 88th General Assembly passed April 5, 1929, 113 O. L., 521. The question here presented as to your authority as Superintendent of Public Works to sell the above described parcel of canal lands, subject to the approval of the Governor and the Attorney General, and as to the regularity of your proceedings for the sale of this property, as the same are set out in the transcript submitted to me, requires a consideration not only of the Act of April 5, 1929, above referred to, but of certain other acts of the General Assembly relating to abandoned Hocking Canal lands in the city of Nelsonville, Ohio.

On May 8, 1919, the 83rd General Assembly passed an act, 108 O. L., Part I, 691, providing for the abandonment for canal purposes of that portion of the Hocking Canal situated within the corporate limits of the city of Nelsonville, Ohio, and granting to said city "the authority and permission to enter upon, improve and occupy forever as a public highway and for sewerage and water purposes" that part of the Hocking Canal in said city above referred to. This act further provided that said city should have the right to dispose of any portion of said canal in excess of the sixty-foot width of the street which the city was to lay out and construct in and upon these canal lands. By Section 3 of said act, it was provided that whatever title and interest remained to the State of Ohio in that part of the Hocking Canal vacated and abandoned by Section 1 of the act "are hereby relinquished and transferred to said city of Nelsonville." However, the rights, privileges and interest in these canal lands thus granted to the city of Nelsonville by this act were qualified by a condition subsequently set out in said act as follows:

"That no portion of the canal property in the sixty feet reserved for street purposes herein described, shall ever be used for any purpose or purposes other than for streets and avenues, and provided further that any portion of the said

abandoned canal property that is not so occupied and used at the end of ten years from the date of the passage of this act, shall immediately revert to the state of Ohio."

It does not appear that the city of Nelsonville at any time within ten years from the date of the passage of said act laid out and constructed a street in and upon said canal lands, as contemplated and provided for in said act, or that said city at any time within said period availed itself of any of the other rights and privileges conferred upon it by this act.

Thereafter, on April 19, 1929, the 88th General Assembly enacted an act known as House Bill No. 417, effective July 25, 1929, providing:

"That the superintendent of public works of Ohio, as director thereof, subject to the approval of the governor and attorney general, be and he is hereby authorized to lease or sell, as he may deem for the best interests of the state, in strict conformity with the provisions of Sections 13965, 13966, 13970 and 13971 of the General Code, relating to the selling or leasing of canal lands, those portions of the abandoned Hocking canal lands in Fairfield, Hocking and Athens counties, Ohio, that are still owned by the state of Ohio."

In this situation, as to the statutory law relating to the sale and disposition of abandoned Hocking Canal lands in the city of Nelsonville, Ohio, the then Attorney General, in response to a request for an opinion on the question from the Superintendent of Public Works, directed an opinion to said officer, Opinions of the Attorney General, 1930, Vol. I, page 105, in which he expressed the view that although the Act of May 8, 1919, above referred to, was effective to vest in the city of Nelsonville, Ohio, title to the Hocking Canal lands in said city, such title was subject to the condition provided for in the act with respect to the reversion thereof to the State of Ohio in case said city did not avail itself of the rights and privileges granted to it by the act within the time therein specified; and that the state might thereafter assert its right and title to such lands by selling or leasing the same through the Superintendent of Public Works pursuant to the specific authority of the Act of April 19, 1929, which, as above noted, went into effect on the 25th day of July, 1929.

Following the opinion of the Attorney General above referred to, the 89th General Assembly under date of May 4, 1931, enacted Senate Bill No. 214, 114 O. L., 554, which in terms repealed the Act of May 18, 1919, provided for the abandonment for canal purposes of that part of the Hocking Canal within the corporate limits of the city

of Nelsonville, Ohio, including the full width of the bed and banks thereof, and granted to said city the right to enter upon, improve and occupy forever, for street, sewerage, drainage and other municipal purposes, that portion of the said abandoned Hocking Canal lands situated within the corporate limits of the city. In this connection, it was further provided that said city should within one year from August 6, 1931, the effective date of the act, locate and define by an accurate survey and monument the boundaries of a street or highway, not less than 60 feet in width over the canal property described in the act, and should also lay out the marginal strips on each side of said street or highway, into lots corresponding to the widths of the adjacent lots or tracts; and that the mayor of said city should, within three months from the date of the completion of said surveys, file with the superintendent of the public works of Ohio, certified copies of plats or blue prints thereof, which should show the alignment of the proposed street or highway and give the serial numbers of the lots laid out on each side of such street or highway. It was further provided by this act that at any time within two years from the enactment thereof the city of Nelsonville by its mayor duly authorized by a resolution of the city council, might make an application to the governor requesting the appointment of a commission to appraise these marginal tracts, and other abandoned canal lands in the city that are not to be improved for street or highway purposes, and that within sixty days from the receipt of such application the governor should appoint such appraisal board. Further provision was made in said act for the sale of such marginal strip by the Superintendent of Public Works on behalf of the State of Ohio, acting in cooperation with the authorized officials of the city of Nelsonville.

It appears that the city of Nelsonville, acting under the authority of this act or under a lease executed to it for this purpose by the Superintendent of Public Works under date of September 1, 1934, has laid out and constructed a street in and upon the Hocking Canal lands abandoned for canal purposes by this act of the legislature; but that said city has done nothing further under this act by way of cooperation with the authorized officials of the State of Ohio for the sale or lease of any of the marginal strips of canal lands remaining after the establishment and construction of said street. The parcel of land here in question and above described is a portion of the marginal strip of canal lands in said city on one side of said street. Inasmuch, however, as the city of Nelsonville has not initiated any proceedings for the appraisal and sale of this or other parts of the marginal strips of these canal lands lying on either side of said street, as provided for in the Act of May 4, 1931, above referred to, neither you, as Superintendent of Public Works, nor the officials of the city

of Nelsonville, acting on its behalf, are authorized to sell this property under the provisions of said act. Inasmuch, however, as there has been a complete abandonment by the city of Nelsonville of its rights under this act with respect to the sale of said marginal strips of canal lands abandoned for canal purposes by said act, and since by reason of the default of said city, you as Superintendent of Public Works cannot comply with the provisions of said act with respect to the sale of this property, the only right and authority which reposes in you as to the sale of this property is that provided for by the more general terms of the Act of April 19, 1929, 113 O. L., 521, referred to in the transcript of your proceedings relating to the sale of this property. I am of the opinion that this act of the legislature authorizes you to sell the property here in question, subject to the approval of the Governor and the Attorney General; and inasmuch as this transcript shows that you have made all the findings of fact necessary to the exercise of your authority in the sale of this property, I am approving such sale on the terms indicated in said transcript, as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3047.

APPROVAL—BONDS CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$14,000.00, PART OF ISSUE DATED DECEMBER 1, 1930.

COLUMBUS, OHIO, October 5, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN:

RE: Bonds of City of Cleveland, Cuyahoga County,  
Ohio, \$14,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated December 1, 1930. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of October 19, 1936, being Opinion No. 6217.