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APPROVAL—FINDINGS FOR CANCELLATION OF FOUR
LEASES OF O & E CANAL LANDS IN NEWCOMERSTOWN,
OHIO—CLARENCE E. ORTT, C. E. ORTT AND H. J. ORTT.

COLUMBUS, OHIO, September 1, 1936.

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

DEAR SIR: On or about June 2, 1936, you submitted for my examination and approval certain findings, four in number, made by your predecessor, Hon. T. S. Brindle, directing the cancellation of four leases, two of which, O & E 415 and O & E 556 were executed to one Clarence E. Ortt of Newcomerstown, and two of which, O & E 83 and O & E 84 were executed to C. E. Ortt and H. J. Ortt, of Newcomerstown.

In a letter directed to you on the date above indicated, I disapproved the findings made by your predecessor and directed the cancellation of these leases for the reason that there were not set out in the several applications for the cancellation of these leases or otherwise in the findings and proceedings of your office relating to these cancellations any reasons which under the provisions of Sections 6 and 7 of House Bill 467 (115 O. L., 512), authorized the Superintendent of Public Works, as Director of said Department, to make the findings made by him directing the cancellation of these leases.

You have recently submitted to me additional facts material in the consideration of the question as to whether at the time the applications for the cancellation of these leases were filed, sufficient reasons then existed and now exist to authorize the cancellation of the leases under the statutory provisions above referred to. Section 6 of the act above noted, provides that if at any time the lessee or lessees of the State of Ohio can no longer economically use the canal lands leased to them by the State of Ohio, such lessee or lessees may file with the Superintendent of Public Works a sworn statement of facts pertaining to such lease, setting forth the reasons why such lease cannot be used any longer by them and requesting the cancellation of such lease. Section 7 of the act provides that upon receipt of such sworn statement the Superintendent of Public Works shall make a thorough investigation of all the facts pertaining to such lease and that if he is satisfied that such representations are true and that all accrued rentals due upon the lease have been paid he may request the Governor and the Attorney General to join with him in the cancellation of the lease. Although, as above noted, no sufficient reason was assigned in any of the applications for the cancellation

of the leases therein referred to, it does appear upon information which you have furnished me that since the execution of these leases there have been such changes in the property covered by these respective leases and with respect to the uses that may be made of these properties by the several lessees, as well as with respect to the economic condition of the lessees in relation to their contemplated use of these properties which justified a finding by the Superintendent of Public Works directing the cancellation of these leases subject to the approval of the Governor and the Attorney General. With respect to the parcels of canal land covered by O & E lease No. 415 and O & E lease No. 556, it appears that after the execution of these leases, a portion of the lands leased were taken by the highway department in the extension and improvement of State Route No. 21 in and through said village and that such taking and use of these lands necessarily affected the use that the lessees were able to make of the remaining parts of the parcels covered by these respective leases. With respect to the parcel of land covered by O & E lease No. 83, it appears from the information which you have furnished to me that this parcel of land was leased by the lessee therein named for use in connection with a contemplated extension of a theatre building now erected on contiguous lands and that by reason of changes in the financial condition of the lessee the property covered by this lease cannot be used by him for the intended purpose. The parcel of land covered by O & E lease No. 84 was leased by the lessees therein named for use as a means of access to a building which the lessees then owned on contiguous lands likewise owned by them. It appears from additional information now given to me by your department that since the execution of this lease the lessees have lost the ownership of the building above referred to and of the land upon which the same is erected and that for this reason the lessees cannot possibly make any economic use of the parcel of land covered by this lease.

Upon the additional information furnished to me relating to the action of the Superintendent of Public Works in directing the cancellation of these leases I am inclined to the view that the facts existing at the time the Superintendent of Public Works made his finding directing the cancellation of these leases justified such findings under the authority of the act of the Legislature above referred to. I am accordingly approving the findings submitted to me with respect to the cancellation of these leases above noted as is evidenced by my approval endorsed upon such findings and upon the several copies thereof all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.