

5441.

APPROVAL—CANCELLATION OF LEASE TO MIAMI AND
ERIE CANAL LAND AT ST. MARYS, AUGLAIZE COUNTY,
OHIO—CATHERINE A. GEIGER.

COLUMBUS, OHIO, May 1, 1936.

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 application filed by one Catherine A. Geiger under the provisions of House Bill No. 467, 115 O. L., 512, for the cancellation of a certain Miami and Erie Canal land lease (M. & E. 54), which lease was originally executed to one William Geiger under date of May 14, 1929, and which is now owned and held by the applicant above named.

By the lease here in question there was leased and demised to the lessee therein named the right to use and occupy a certain parcel of Miami and Erie Canal lands, containing 962 square feet, more or less, at St. Marys in Auglaize County, Ohio, said parcel being that portion of the Miami and Erie Canal property in the rear of Lot No. 9 and the rear of the easterly 7 feet off the east side of Lot 10 in Block No. 32 of the east addition to the said city.

The only reason assigned by the applicant for the cancellation of this lease is that she no longer has any use for the land covered by the lease and that she has abandoned such land. Acting upon this application, which was apparently filed in the office of the Superintendent of Public Works on or about December 24, 1934, the Superintendent of Public Works in the person of Hon. T. S. Brindle, your predecessor in said office, made an order under date of August 1, 1935, granting a cancellation of this lease. From a legal point of view, it may be doubted whether the reasons assigned by the applicant for the cancellation of this lease are, in and of themselves, sufficient to justify the action which was taken by the Superintendent of Public Works granting the order of cancellation. However, it may be assumed in accordance with the legal presumptions obtaining with respect to official action of this kind that the Superintendent of Public Works at the time he made this order cancelling this lease had before him a state of facts relating to this lease and the use, if any, that the lessee was able to make of the same which justified the order made by the Superintendent of Public Works on this application.

In this view I am inclined to approve the action taken by your predecessor directing the cancellation of this lease, which is accordingly done

as is evidenced by my approval appended to the resolution attached to the order above referred to, and to the copies of said resolution, all of which are herewith returned.

Before this cancellation is noted in the records of your office and otherwise made effective with respect to this lease, you should be satisfied "that all accrued rentals due thereon have been paid in full up to the next semi-annual rental payment date" as provided in Section 7 of said act, which section has been carried into the General Code as Section 478-7.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5442.

APPROVAL—APPLICATION FOR REDUCTION OF RENTALS
ON MIAMI AND ERIE CANAL LAND LEASE—J. HARVEY
McCLURE.

COLUMBUS, OHIO, May 1, 1936.

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

DEAR SIR: You recently submitted for my examination and approval a finding made by your office upon an application filed by one J. Harvey McClure, as co-receiver of the Cincinnati and Lake Erie Railroad Company for reductions in the amount of current and back rentals on a lease which was executed to said railroad company under its then name of the Cincinnati, Hamilton and Dayton Railway Company under date of January 18, 1927, and which provided for an annual rental of \$690.00.

The lease here in question, which is referred to on your records as Lease No. M. & E. 256, is one in and by which there is leased and demised to the lessee therein named and to its successors and assigns a section of Miami and Erie Canal lands in Montgomery, Warren and Butler Counties, which section is more particularly described in said lease and also in the application above referred to.

By your finding you have granted a reduction in the amount of the delinquent rentals under this lease, which is the sum of \$345.00, for the period of time from November 1, 1934, to May 1, 1935, to the sum of \$276.00. You have likewise granted a reduction in the amount of the current rentals provided for under this lease for the period of time from **May 1, 1935, to May 1, 1936**, from the sum of \$690.00, the annual rental provided for in the lease, to the sum of \$552.00. The reason assigned in the application for the reduction in the amounts of the delinquent and