

The application for the cancellation of this lease was filed with you on or about the 1st day of December, 1933, and in said application the reason assigned for the requested cancellation of the lease is that The Miami Valley Railway Company has been authorized by the Public Utilities Commission of Ohio to discontinue operation of its railway, and to dismantle its property; pursuant to said authorization The Miami Valley Railway Company has discontinued operations as a railway and has dismantled its property and has sold its facilities previously located on this property which were used in the operation of the railway, and that for this reason said railway company has no further use in any way for the property covered by said lease.

It appears from your finding that The Miami Valley Railway Company is now indebted to the State of Ohio in the sum of \$400.00, the same being the semi-annual installment of rent under said lease from November 1, 1933, to May 1, 1934. And by your finding and order, this lease is canceled as of May 1, 1934, upon the condition that said company shall pay said accrued rental. In this connection, it is noted that section 7 of the act of the 90th General Assembly, above referred to, provides that upon the cancellation of a canal land lease in the manner therein provided, the Superintendent of Public Works shall note such cancellation upon each of the triplicate copies of such lease. With respect to this provision, you are advised that no notation of cancellation should be made upon such lease before the payment by said company of the accrued rental now due and payable under said lease. Neither should any copy of your finding with respect to the cancellation of such lease be delivered to the lessee before the payment by it of such accrued rental.

Upon examination of the proceedings relating to the cancellation of the lease in question, I find that the same are substantially in the form provided by the terms of the act of the 90th General Assembly, above referred to, and the same are accordingly hereby approved by me as to legality and form, as is evidenced by my signature in and to the resolution approving your order canceling this lease, subject to the condition before noted with respect to the payment by The Miami Valley Railway Company of the accrued rental on this lease now due and payable.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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2673.

APPROVAL.—PROCEEDINGS RELATING TO APPLICATION MADE BY CINCINNATI, DAYTON RAILWAY COMPANY OF BALTIMORE, MARYAND, FOR A REDUCTION IN THE ANNUAL RENTAL TO BE PAID UPON THE LEASE OF MIAMI AND ERIE CANAL LANDS IN BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, May 16, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my approval the report of your finding

on an application made by the Cincinnati and Dayton Railway Company of Baltimore, Maryland, for a reduction in the annual rental to be paid by said company upon the lease of Miami and Erie Canal lands between Middletown and Hamilton in Butler County, Ohio, which canal lands said company is now occupying and using for right of way and other necessary railroad purposes.

The lease here in question, which bears serial number M & E 22, was executed under date of May 1, 1927, for a term of fifteen years expiring April 30, 1942, and the same provided for an annual rental of \$1676.00.

The application for a reduction in the amount of the annual rental provided for in this lease was filed with you on or about November 27, 1933, pursuant to the provisions of House Bill No. 467, which was passed by the 90th General Assembly under date of June 8, 1933, and which became effective on the 11th day of October, 1933. 115 O. L. 512. By the provisions of this act, the Superintendent of Public Works, with the approval of the Governor and Attorney General, is authorized to make a rental adjustment on existing canal land leases for a period of one year in advance beginning with the next semi-annual rental payment date, provided for in such leases. Such rental readjustment can be made by the Superintendent of Public Works only upon an application therefor made by the lessee in the manner and form provided for in section 3 of said act, in and by which application, among other things, the lessee is required to set forth the reasons why the annual rental provided for in said lease should be revised. In the application filed by the lessee with you as Superintendent of Public Works, the reason assigned for the reduction in the annual rental provided for in this lease, requested by the lessee, is "economic conditions affecting railroad earnings". Acting upon this application, you have made a finding in and by which you have granted to said lessee a reduction in the annual rental under said lease for the period of time between May 1, 1934, and May 1, 1935, and have fixed the annual rental to be paid by said lessee for this period at the sum of \$1340.00.

Upon examination of the proceedings relating to this matter, including the application for the reduction in rental, above referred to, I am inclined to the view that they are in substantial conformity with the statutory provisions outlined in House Bill No. 467 and the same are accordingly hereby approved by me as to legality and form, as is evidenced by my approval endorsed in and upon the resolution of approval which is made a part of the proceedings relating to the reduction of said rental, and upon the copies thereof, all of which, together with the duplicate copies of your finding and the application, are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*