

3500.

APPROVAL, LEASE TO LAND IN RICHLAND TOWNSHIP, ALLEN COUNTY, OHIO, FOR STATE GAME AND BIRD REFUGE.

COLUMBUS, OHIO, November 23, 1934.

HON. WILLIAM H. REINHART, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease No. 2258, executed by the Bluffton College of Richland Township, Allen County, Ohio, to the state of Ohio, on a parcel of land in said township and county, known as the southwest quarter of section 1, township 2 south, range 8 east, being a total of thirty-eight (38) acres of land. By this lease, which is one for a term of five years, this land is leased and demised to the state solely for state game refuge purposes; and it is noted in this connection that acting under the provisions of section 1435-1 and other related sections of the General Code, the Conservation Council, acting through you as Conservation Commissioner, has set this property aside as a state game and bird refuge during the term of said lease.

Upon examination of this lease, I find that the same has been properly executed and acknowledged by said lessor and by the Conservation Council acting on behalf of the state through you as Commissioner.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

3501.

INDIGENT—RENT VOUCHERS FOR HOUSE RENT NOT ISSUABLE WHERE ACTION PENDING TO FORECLOSE MORTGAGE ON PREMISES—FORECLOSURE BY FIRST MORTGAGE.

*SYLLABUS:*

*By virtue of the limitations imposed by Section 3 of Amended Senate Bill No. 200 as amended by Substitute Senate Bill No. 53 as enacted by the 90th General Assembly.*

1. *Rent vouchers for house rent of indigent persons may not be issued where an action is pending by the first mortgagee to foreclose a mortgage on the premises.*
2. *Rent vouchers cannot continue to be issued after the beginning of an action by the first mortgagee to foreclose the mortgage on the premises.*
3. *Where, pending foreclosure proceedings by the first mortgagee, a receiver has been appointed to collect the rent for the premises, rent vouchers should not be issued to such receiver.*

COLUMBUS, OHIO, November 24, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads in part as follows:

“Proper consideration of the responsibilities of the public officials who are required to issue and honor rent vouchers and warrants authorized to be issued under the terms of Amended Senate Bill No. 200 passed March 22, 1933, (otherwise known as the Annat Bill) as amended by Senate Bill 53 effective December 29, 1933, requires me to request your opinion on the following questions arising thereunder:

1. May vouchers for the house rent of indigent persons be issued where an action is pending to foreclose a mortgage on the premises?
2. May such rent vouchers continue to be issued after the beginning of an action to foreclose such mortgage?
3. Where, in such pending foreclosure proceedings, a receiver has been appointed with authority to collect the rents of the premises, may the rent vouchers be issued to such receiver?”

Section 3 of Amended Senate Bill No. 200 of the regular session of the 90th General Assembly as amended by Substitute Senate Bill No. 53 of the first special session of the 90th General Assembly, provides:

Sec. 3.

“No vouchers shall be issued to any owner of real estate according to the provisions of this act unless said owner shall agree to accept them for the rent thereof *and the vouchers herein mentioned shall not be honored by the auditor unless it be endorsed thereon by the first mortgagee that said first mortgagee agrees not to foreclose on said property as long as same is occupied and paid for by such warrants without giving thirty days' notice to said county commissioners or to their duly appointed agent of the intention of foreclosing.*” (Italics the writer's.)

I call your attention to my opinion No. 3399, rendered November 3, 1934, which held as disclosed by the first branch of the syllabus:

“1. Where real property is placed by the courts in the hands of a receiver, such receiver having obtained the permission of the court appointing him, may receive the incidental benefits of Amended Senate Bill No. 200 as amended by Amended Substitute Senate Bill No. 53 as enacted by the 90th General Assembly, *provided all the other conditions set forth in the law have been complied with.*” (Italics the writer's.)

This opinion was based on the reasoning that the word “owner” as employed in Section 3 of the so-called Annat Act, quoted supra, was broad enough in its meaning in the particular Act in question to embrace a “receiver.” However, it should be noted that my opinion pointed out that a receiver may take advantage of the Act in question “provided all the other conditions set forth in the law

have been complied with". In the ordinary receivership cases it would be possible for compliance with all the conditions in the law, but where a receiver is appointed pending an action to foreclose a mortgage on the premises, a different question is presented as it becomes impossible for the first mortgagee to agree that foreclosure proceedings will not be commenced.

The language employed in Section 3, that "the vouchers herein mentioned shall not be honored by the auditor unless it be endorsed thereon by the first mortgagee that said first mortgagee agrees not to foreclose on said property so long as same is occupied and paid for by such warrants without giving thirty days' notice to said county commissioners or to their duly appointed agent of the intention of foreclosing" is of a mandatory nature. In other words, such conditions are made conditions precedent before the auditor can honor such vouchers.

By the terms of the Act a separate voucher is issued for each monthly installment of rent and the limitations in Section 3, quoted supra, relate not only to the first or original voucher, but to each monthly voucher thereafter. The commencement of foreclosure proceedings by the first mortgagee makes it impossible for such first mortgagee to agree "not to foreclose on said property as long as same is occupied and paid for by such warrants without giving thirty days' notice to said county commissioners or their duly appointed agent of the intention of foreclosing," a condition precedent before the auditor may honor such vouchers. Hence, specifically answering your three questions, it is my opinion that, by virtue of the limitations imposed by Section 3 of Amended Senate Bill No. 200 as amended by Substitute Senate Bill No. 53 as enacted by the 90th General Assembly,

1. Rent vouchers for the house rent of indigent persons may not be issued where an action is pending by the first mortgagee to foreclose a mortgage on the premises.
2. Rent vouchers cannot continue to be issued after the beginning of an action by the first mortgagee to foreclose the mortgage on the premises.
3. Where, pending foreclosure proceedings by the first mortgagee, a receiver has been appointed to collect the rent for the premises, such vouchers should not be issued to such receiver.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*