

3293.

DISAPPROVAL—CERTAIN DEED EXECUTED BY THE DEPARTMENT OF PUBLIC WORKS TO THE CITY OF COLUMBUS, OHIO, BY WHICH THERE IS GRANTED AN EASEMENT FOR STREET AND SIDEWALK PURPOSES.

COLUMBUS, OHIO, October 11, 1934.

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

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain deed executed by you as Director of the Department of Public Works on behalf of the State of Ohio to the City of Columbus, Ohio, in and by which there is granted to said city an easement for street and sidewalk purposes in the following described parcel of real estate:

“Situated in the city of Columbus, county of Franklin, state of Ohio, described as follows:

Beginning at the southwest corner of the lands now owned by the state of Ohio and occupied by the Ohio Penitentiary, and being the northeast corner of Spring Street and Dennison Avenue in the city of Columbus, and running thence northerly with the westerly line of the said penitentiary lands, forty (40') feet to a point; thence southeasterly on a curve with a radius of thirty-four (34') feet, fifty-three and four-tenths (53.4') feet, more or less, to a point on the north line of West Spring Street, and the southerly line of said penitentiary lands; thence westerly with the said southerly line of said penitentiary lands, forty (40') feet to the place of beginning and containing two hundred forty-eight and seven hundredths (248.07) square feet, more or less. Said curved lines being six (6') feet, measured radially northeasterly from the proposed new curb around northwest corner of said streets, as shown by plat hereto attached.”

It appears from the description of this parcel of land and from the further provisions of the deed that the purpose of this deed is to grant and convey to the city of Columbus an easement in a triangular piece of land in the southwest corner of the Ohio Penitentiary land, which parcel of land so granted and conveyed is to be improved by the city for street and sidewalk purposes and for the ultimate purpose of facilitating the movement of traffic from Dennison Avenue to Spring Street, and vice versa, at this corner. The purpose sought to be attained by this conveyance is, without doubt, quite commendable both to the state departments concerned and to the city of Columbus and the department or departments thereof proposing to make this improvement.

However, I am wholly unable to find any legal authority which empowers you to convey property to the city of Columbus by way of easement therein or otherwise. An easement in land is an interest therein which can be conveyed only by deed. *Yeager vs. Tuning*, 79 O. S. 121. This being true, no officer of the state, whether such officer be the Governor or some subordinate official, has any more authority to convey property of the state by way of easement to a third party than such officer would have to convey a fee simple title to such property, unless such officer is specifically authorized by statute to make the

conveyance. In other words, no officer or agent of the state has any power to grant or convey to another any easement or any interest in lands of the state unless the right to do so has been expressly conferred by law. See *State, ex rel. vs. Railway Co.*, 37 O. S. 157, 174. In this connection, it is noted that section 8523, General Code, relating to the conveyance of real estate belonging to the state and of interests therein provides:

“All conveyances of real estate, or any interest therein, sold on behalf of the state, in pursuance of law, shall be drafted by the auditor of state, executed in the name of the state, signed by the governor, countersigned by the secretary of state, and sealed with the great seal of the state.”

This statute evidences the general policy of the state to require the conveyance of all lands of the state or of interests therein to be executed by the Governor, and then only when such conveyance is authorized by law. It follows from what has been said above that there is no legal authority for the execution of the deed here in question and the same is herewith returned without approval.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3294.

APPROVAL, LEASE TO LAND IN LIBERTY TOWNSHIP, WOOD COUNTY, OHIO, FOR GAME REFUGE PURPOSES.

COLUMBUS, OHIO, October 11, 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. 2245, executed by one William M. Stitt of Liberty Township, Wood County, Ohio, to the state of Ohio on a parcel of land in said township and county, known as the northwest one-quarter of section 21, township 4, north, range 10 east, containing 160 acres more or less, and the southwest quarter of the northeast quarter of section 21 in township 4, north range 10 east, containing 40 acres more or less in Liberty Township, Wood County, Ohio, a total of 200 acres. 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