

you, acting for and in the name of the State of Ohio, and by The Williams Building Company, acting by the hand of its President pursuant to the authority conferred upon him by a resolution of the Board of Directors of said company, I am approving these leases as to legality and form as is evidenced by my approval endorsed upon these leases and upon the duplicate and triplicate copies of the same, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3128.

APPROVAL—CANAL LAND LEASE, STATE OF OHIO, THROUGH SUPERINTENDENT OF PUBLIC WORKS, WITH FRANK D. JOHNS, COSHOCTON, OHIO, TERM FIFTEEN YEARS, ANNUAL RENTAL \$175.00, DESIGNATED PORTION, UPPER OR MIDDLE BASIN, OHIO CANAL, COSHOCTON COUNTY, OHIO, PROXIMITY, VILLAGE OF ROSCOE, THE RIGHT TO OCCUPY AND USE FOR PARK, BATHING BEACH, SUMMER RESORT AND GENERAL AMUSEMENT PURPOSES.

COLUMBUS, OHIO, October 24, 1938.

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 a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said department to one Frank D. Johns of Coshocton, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$175.00, there is leased and demised to the lessee above named the right to occupy and use for park, bathing beach, summer resort and general amusement purposes that portion of the upper or middle basin of the Ohio Canal in Coshocton County, Ohio, northeast of the village of Roscoe, Ohio, commencing at the north end of the old aqueduct over the Walhonding River, being at or near Station 3722+80, of G. F. Silliman's Survey of the Ohio Canal south of Massillon, and extending northeasterly fourteen hundred and eighty (1480') feet, more or less, including the full width of the bed and banks thereof, to the southwesterly line of

what is commonly known as the "Keen Road," running from Millersburg to Coshocton, Ohio, and containing ten (10) acres, more or less.

This lease is one executed by you under the general provisions of Section 13965, General Code, and the more particular provisions of Amended Substitute Senate Bill No. 72 enacted by the 89th General Assembly under date of April 29, 1931, 114 O. L., 541.

Aside from one provision in this lease to which your attention is here called, this lease instrument and its conditions and restrictions are in conformity with the above noted statutory enactments and with other enactments relating to leases of this kind. It appears from the recitals of this lease instrument that Frank D. Johns, the lessee named in this instrument, now holds a lease on the above described property which was executed to him by the Superintendent of Public Works under date of January 10, 1929; and the provision in the present lease instrument executed by you relates to this situation and is stated as follows:

"This lease is granted to supersede a lease granted January 10, 1929, in order to provide the right of renewal for a like term, thus enabling the proper financing of valuable improvements to the property described herein, which otherwise the lessee could not afford to make on said premises."

Although under the provisions of Section 13965, General Code, an owner of an existing lease for state canal lands may surrender the same to the state in order to have the land described therein included in a new lease for a term not exceeding fifteen years, the Superintendent of Public Works, before granting such new lease, must be satisfied "that the extension of the lease is for the purpose of making a valuable improvement thereon, which the lessee could not otherwise afford to make for the remaining portion of the unexpired lease." It follows from this that you are not authorized to grant to Mr. Johns a new lease of the above described property superseding the lease which he now holds, merely for the purpose of incorporating in the new lease a right of renewal for a like term, even though such right of renewal is for the purpose of enabling the lessee to finance the construction of valuable improvements on the property which said lessee could not otherwise afford to make. Aside from the obvious question of your authority to bind some future successor to renew the present lease upon its expiration fifteen years hence, you are not authorized under the provisions of Section 13965, General Code, above referred to, to execute the present lease unless you find that during the term of the present lease, without any reference to a renewal thereof, the lessee intends to construct improvements on this prop-

erty which he could not afford to make under his existing lease and for the remainder of the term thereof.

I find that this lease has been properly executed by you as Superintendent of Public Works, acting for and on behalf of the State of Ohio, and by said Frank D. Johns, the lessee therein named, and assuming that you will make proper correction of the recital therein relating to your reason for executing this lease so as to conform to the suggestions above made, I am approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3129.

APPROVAL--BONDS NORWICH TOWNSHIP RURAL  
SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO.  
\$2,300.00, DATED OCTOBER 1, 1938.

COLUMBUS, OHIO, October 24, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN:

RE: Bonds of Norwich Twp. Rural School Dist.,  
Franklin County, Ohio, \$2,300.00 (Limited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building bonds dated October 1, 1938, bearing interest at the rate of  $3\frac{1}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*