

Marginal Tract No. 28, is, I assume, a part of that particular section of the Hocking Canal in the city of Lancaster, Ohio, above described. And from the transcript of your proceedings, it appears that this tract of land is being sold to the city of Lancaster, Ohio, which city is at present a lessee of said lands and is the owner of lands abutting upon this particular tract. And from the transcript it further appears that this marginal tract of land is being sold to said city for the appraised value thereof, which is the sum of \$525.00.

Upon the facts above stated it quite clearly appears that you are authorized to sell this tract of land to the city of Lancaster as the purchaser thereof for the appraised value thereof above stated. And finding, as I do, that your proceedings relating to the sale of this property are in all respects regular and in conformity with the provisions of the act of the General Assembly above noted, I am approving this transcript and the sale of this tract of land evidenced thereby as appears by my approval endorsed upon the transcript and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2912.

APPROVAL—LEASE, CANAL LAND, SUPERINTENDENT OF PUBLIC WORKS WITH AUGUST A. NICKELS, FIFTEEN YEARS, ANNUAL RENTAL \$102.00, RIGHT TO OCCUPY AND USE FOR BUSINESS AND BUILDING PURPOSES, PORTION OF MIAMI AND ERIE CANAL, DEFIANCE, DEFIANCE COUNTY, OHIO.

COLUMBUS, OHIO, September 2, 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 August A. Nickels of Defiance, Ohio. By this lease, which is one for a stated term of ninety years and which provides for an annual rental during the first fifteen-year period of the term of the lease of \$102.00, payable in semiannual installments of \$51.00 each, there is leased and

demised to the lessee above named the right to occupy and use for general business and building purposes that portion of the abandoned Miami and Erie Canal lands, located in the City of Defiance, Defiance County, Ohio, which is more particularly described as follows:

Beginning at the point of intersection of the easterly line of said canal property and the northerly line of Fourth Street in said city, said point being 114.7 feet westerly from the westerly line of Clinton Street, and running thence southerly with the said easterly line, 25 feet, more or less, to the northerly curb line of that portion of Fourth Street; thence westerly parallel with the northerly line of Fourth Street, 94 feet, more or less; thence northerly parallel with the said easterly line of said canal property, ninety-one (91') feet, more or less, to a point that is sixty-six (66') feet northerly, as measured parallel with said easterly line from the northerly line of Fourth Street; thence easterly parallel with Fourth Street, 94 feet, more or less, to the said easterly line; thence southerly sixty-six (66') feet, more or less, to the place of beginning; reserving therefrom fourteen (14') feet off of the easterly side thereof for a driveway for the use of the State of Ohio and its lessees, and containing, exclusive of said reservation, 7,280 square feet, more or less.

This lease is one executed by you under the authority of the appropriate provisions of the DeArmond Act, 114 O. L., 546, and of other statutory enactments relating to leases of this kind. Section 19 of the DeArmond Act, above referred to, which section has been carried into the General Code as section 14178-45, provides:

“At the end of two years from the date at which this act becomes effective, any portion of said abandoned Miami and Erie canal that has not been designated by the director of highways as necessary for state highway improvements under the terms of this act, or has not been leased for public park purposes, to any of the parties herein authorized to make application to lease portions of said abandoned canal for public park purposes, may be appraised by the superintendent of public works at its true value in money, and leased to responsible parties for a term of fifteen years and multiples thereof up to ninety years, or for a term of ninety-nine years renewable forever, subject to the approval of the governor and attorney general, and the annual rental therefor

shall be six per cent of the appraised value thereof, as determined by said superintendent of public works."

This section, it will be noted, does not in terms provide for reappraisal at the end of each fifteen-year period as to a lease the term of which, as that here presented, is a multiple of fifteen years. Inasmuch as the lease here under consideration provides that at the end of each fifteen-year period, during the continuance of this lease, the canal property herein leased shall be reappraised by the proper state authority, and the rental for each of said periods shall be a sum equal to six per cent of the respective appraisements, it follows that authority for this provision must be found in some statutory enactment other than the provisions of the DeArmond Act above quoted. In this connection, it is noted that the Farnsworth Act, so-called, 114 O. L., 518, which was enacted at about the same time as the DeArmond Act, and which became effective on the same day the DeArmond Act went into effect, provides generally for the lease to responsible parties of such abandoned canal property as has not been disposed of for park purposes in the manner provided by this act; and with respect to such leases this statute provides that the term of the same may be for ninety-nine years, renewable forever, or for a term of fifteen years and multiples thereof up to ninety years; and further provides that "leases granted for a longer term than fifteen years shall contain a clause providing for reappraisal of the canal lands described in such leases, by proper state authority, at the end of each 15-year period, embraced in such leases and the annual rental thereof shall be six per cent of the appraised value thereof for each period."

The provisions of the Farnsworth Act here noted are obviously in pari materia with those of the DeArmond Act above quoted. And inasmuch as it is a recognized and declared policy of this State to require an appraisal of canal lands covered by leases for terms exceeding fifteen years, at the end of each fifteen-year period of the term of such leases, all statutory provisions relating to leases of this kind should be read together and, if possible, so construed as to effect the purpose intended. See *City of Cincinnati vs. Connor*, 55 O. S., 82. In this view, I have no difficulty in giving application to the above quoted provision of the Farnsworth Act with respect to the lease here in question, and in sustaining the provision in this lease for reappraisal at the end of each fifteen-year period of the term of the lease, notwithstanding there is nothing in the provisions of the section of the DeArmond Act above quoted which makes any such requirement. On examination of this lease, I find that the same has been executed in the manner provided by law by yourself, as Superin-

tendent of Public Works and as Director of said department, and by August A. Nickels, the lessee therein named. I further find that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the statutory provisions above noted and with other statutory enactments relating to leases of this kind. I am accordingly approving this lease as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2913.

APPROVAL—BONDS CITY OF CLEVELAND, CUYAHOGA
COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, September 6, 1938.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of Cleveland, Cuyahoga County,
Ohio, \$5,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated September 1, 1931. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of April 13, 1934, being Opinion No. 2512.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.