

5480.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYA-  
HOGA COUNTY, OHIO, \$1,000.00.

COLUMBUS, OHIO, May 7, 1936.

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

5481.

APPROVAL — BONDS OF CUYAHOGA COUNTY, OHIO,  
\$11,400.00.

COLUMBUS, OHIO, May 7, 1936.

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

5482.

APPROVAL—LEASE OF OHIO AND ERIE CANAL LAND TO  
THOMAS WILSON, BEDFORD, OHIO.

COLUMBUS, OHIO, May 8, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease instrument in triplicate executed by Hon. T. S. Brindle, your predecessor in office, as Superintendent of Public Works and Director of said Department, by which there are leased and demised to one Thomas Wilson of Bedford, Ohio, in consideration of an annual rental of \$200.00 to be paid by him in semiannual installments as therein provided, the right to take from the level of the Ohio and Erie Canal above Lock 37 in said canal, so much of the surplus water flowing into the level of the canal at this point as is not needed for the lockage of boats and which is not now leased for manufacturing purposes, and also the right to use and occupy a parcel of canal land described in said lease for the purpose of enabling the above named lessee to use and enjoy for hydraulic purposes the water taken by him under this lease.

The term of said lease, both as to the use of the water therein provided for and as to the use and occupation of said parcel of land, is five years.

It is pertinent to note in this connection that the lease of the parcel of canal lands, above referred to, is wholly incidental to the lease of the right to take and use for hydraulic purposes the water from the canal, provided for in the lease. The point to this observation is that if the lease of this parcel of land were not wholly incidental to the lease of the water power granted in and by this lease, there might be some question with respect to the authority of the Superintendent of Public Works to grant a canal land lease for a term of five years.

The only other point of interest suggested on consideration of the provisions of this lease is whether they are sufficiently definite with respect to the amount of water that the lessee is authorized to take from the canal during the term of the lease. In this connection, it is noted that the lease provides that the lessee is to install at his own expense a weir in and over which the water is to be taken, which weir is to be placed six inches below the standard water level of the canal at this point and is to be twenty-one feet in length. This provision, together with the further provision that the water taken by the lessee under this lease is to be surplus water not needed for lockage or manufacturing purposes, sufficiently limits the amount of water to be taken by the lessee under the terms of this instrument so as to make its provisions definite and certain with respect to this matter.

Upon consideration of the provisions of this lease, I am of the opinion that the same are in substantial conformity with the provisions of Sections 431 and 14009, General Code. I am, accordingly, hereby approving the lease, as to legality and form, and my approval is endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*