

been made to that end by statutory enactment. Thus, in the act of April 21, 1927, 112 O. L. 388, providing for the abandonment of that portion of the Miami and Erie Canal from a point five hundred feet north of the state dam near the corporation line of the city of Middletown, Butler County, Ohio, and Saint Bernard in Hamilton County, Ohio, the Director of Highways was expressly invested with the custody and control of such abandoned canal lands for state highway purposes. The same is true of the act of May 11, 1927, 112 O. L. 360, providing for the abandonment of a portion of the Miami and Erie Canal in Lucas County.

In this connection I likewise note an act passed by the Legislature under date of March 21, 1917, authorizing the county commissioners of Muskingum County to occupy and use for public highway purposes certain abandoned Ohio canal lands in said county. Other instances of this kind might be noted, but enough has been said to indicate that in the absence of statutory authority therefor, abandoned canal lands of the state under the jurisdiction and control of the Superintendent of Public Works cannot be used for highway purposes.

It follows from the considerations above noted that the question presented in your communication is required to be answered in the negative.

In concluding this opinion, it may be well to note that the decision and opinion of the court in the case of *Kirk, Superintendent of Public Works vs. Maumee Valley Electric Company*, 279 U. S., 797, is in no wise inconsistent with the conclusion here reached by me on the question presented in your communication. In the case cited, the Supreme Court of the United States held that effect was required to be given to the act of May 11, 1927, above referred to, providing for the abandonment of a portion of the Miami and Erie Canal in Lucas County for canal and hydraulic purposes and for the use of the canal for highway purposes, as against lessees holding leases of surplus water in the canal for hydraulic purposes under the authority of a previous act of the Legislature of this state.

As above noted, the act of May 11, 1927, expressly provided that the canal lands abandoned by said act should be devoted to highway uses and purposes under the supervision and control of the state highway director in the manner therein provided, and there is nothing in the decision or opinion of the court in the case of *Kirk vs. Maumee Valley Electric Company* which carries any suggestion that canal lands of the state under the jurisdiction and control of the Superintendent of Public Works can be turned over to another department of the state government for highway purposes in the absence of express legislative authority to that end.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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1538.

APPROVAL, TRANSCRIPT OF PROCEEDINGS FOR SALE OF CANAL  
LAND IN STARR TOWNSHIP, HOCKING COUNTY.

COLUMBUS, OHIO, February 19, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a transcript of the proceedings of your office relating to the proposed sale and conveyance of a parcel of abandoned Hocking canal lands to one Norman Cooper, of Haydenville, Ohio, which parcel of land is

situated in Starr Township, Hocking County, Ohio, and which, together with the exceptions to which the conveyance is subject, is more particularly described as follows:

“Commencing at Station 1861 plus 30 of Bruce Doughton’s survey of said abandoned Hocking Canal, made under the direction of the State Board of Public Works in 1912, being the line between Green and Starr Townships, in said county, and extending thence southeasterly over and along said abandoned Hocking Canal property, including the full width of the bed and banks of said canal, a distance of 2,720 feet, more or less, to the southerly line, produced, of lands owned by The National Fireproofing Company, being at or near Station 1888 plus 50 of Doughton’s survey, and containing four and ninety-seven hundredths (4.97) acres, more or less;

Excepting and reserving therefrom, however, any portion of said abandoned Hocking Canal lands that has recently been designated by the Director of Highways of the State of Ohio, under the provisions of Section 2 of House Bill No. 417, as passed by the 88th General Assembly of Ohio (O. L. 113, page 522), as necessary in the proposed scheme of the Department of Highways to relocate and improve State Highway No. 155, Section K, of surveys made for the relocation and improvement thereof, a blue-print plat of which survey was filed with the Superintendent of Public Works on the 16th day of January, 1930, and to which reference is hereby made for additional description of the tracts herein excepted;

Also excepting and reserving therefrom, all State leases for portions of said abandoned Hocking Canal property that were in force at the date of the passage of said House Bill No. 417, most of which tracts are included in the selections made by the Department of Highways for highway purposes, as shown upon the highway department’s plat of said survey filed with the Department of Public Works on the date noted above; Said lands are also a part of the abandoned Hocking Canal property as shown on plat No. 22 of Bruce Doughton’s survey of the abandoned Hocking Canal lands, on file in the office of the Department of Public Works, at Columbus, Ohio.”

The proposed sale and conveyance of the above described property is pursuant to the authority of the provisions of House Bill 417, passed by the 88th General Assembly, April 5, 1929, and which went into effect July 24, 1929. This act has been carried into the General Code by designation as Sections 14152-3, 14152-3a and 14152-9a and provides by the first section thereof (Section 14152-3, G. C.) that the Superintendent of Public Works of Ohio, as Director thereof, is authorized, subject to the approval of the Governor and Attorney General, to lease or sell, as he may deem for the best interest of the state, in strict conformity with Sections 13965, 13966, 13970 and 13971 of the General Code, those portions of the abandoned Hocking canal lands in Fairfield, Hocking and Athens Counties that are still owned by the State of Ohio. Section 2 of said act (Section 14152-3a, G. C.) provides that there is excepted and reserved from the provisions of the act any portion of said abandoned Hocking Canal that is now occupied by state highways or that may be designated by the Director of Highways within one year from the effective date of said act as necessary in any scheme of highway improvement adjacent to said abandoned canal lands.

It appears from the transcript that the Director of Highways, acting under authority of said act, has designated certain portions of the above described tract and parcel of abandoned canal lands that will be needed for highway purposes, which portions of said parcel so needed for highway purposes are designated in a plat thereof filed in the office of the Superintendent of Public Works, and which by reference to said plat are excepted from the description of the parcel of land sold and conveyed to Mr. Cooper.

As noted above, Section 1 of said act provides that the lease or sale of abandoned Hocking Canal lands now owned by the state shall be made in strict conformity with the provisions of Sections 13965 et seq. of the General Code.

An examination of the transcript of your proceedings relating to the purchase of this property shows that you have made the findings necessary under the provisions of Section 13971, General Code, to authorize you to sell the parcel of land above described, and your proceedings relating to the sale of this property being otherwise in conformity with law, the transcript thereof is hereby approved as is evidenced by my approval endorsed upon said transcript and upon the duplicate copy thereof.

I have examined the deed form of the deed to be executed by the Governor, conveying the above described property to Norman Cooper, and, finding the same to be in proper form, said deed form is hereby approved.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1539.

APPROVAL, TRANSCRIPT OF PROCEEDINGS FOR SALE OF CANAL  
LAND IN GREEN TOWNSHIP, HOCKING COUNTY.

COLUMBUS, OHIO, February 19, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a transcript of the proceedings of your office relating to the proposed sale and conveyance of a parcel of abandoned Hocking canal lands to one C. S. Matheny, of Haydenville, Ohio, which parcel of land is situated in Green Township, Hocking County, Ohio, and which, together with the exceptions to which the conveyance is subject, is more particularly described as follows:

“Commencing at Station 1836 plus 12 of Bruce Doughton’s survey of said abandoned Hocking Canal, made under the direction of the State Board of Public Works in 1912, and extending thence southeasterly, including the full width of the bed and banks thereof, a distance of 2518 feet, more or less, to the south line of Green Township, and containing six and thirty hundredths (6.30) acres, more or less;

Excepting and reserving therefrom, however, any portion of said abandoned Hocking Canal lands that has recently been designated by the Director of Highways of the State of Ohio, under the provisions of Section 2 of House Bill No. 417, as passed by the 88th General Assembly of Ohio (O. L. 113, page 522), as necessary in the proposed scheme of the Department of Highways to relocate and improve State Highway No. 155, Section K, of surveys made for the relocation and improvement thereof, a blueprint plat of which survey was filed with the Superintendent of Public Works on the 16th day of January, 1930, and to which reference is hereby made for additional description of the tract herein excepted;

Also excepting and reserving therefrom all state leases for portions of said abandoned Hocking Canal property that were in force at the date of the passage of said House Bill No. 417, most of which tracts are included in the selections made by the Department of Highways for Highway purposes, as