

The only question with respect to said leases arises from the fact that in each of them it is provided that there shall be a right of renewal for a like term at the expiration of the present lease subject to reappraisalment by the proper state officials at the time of such renewal. Assuming that the present laws relating to these reservoir lands are in force at the time of the expiration of the leases here in question, it would be competent for the Superintendent of Public Works or other officer or officers performing the functions of that office, to execute a new lease on said respective parcels of land to the lessees above named, and in many cases it would be entirely just and proper that this be done.

However, there is nothing in the provisions of Sections 471 and 13965 et seq., General Code, or in any other provision of the General Code of Ohio which authorizes you to insert in these leases said provision with respect to the renewal thereof. And in my opinion said provision in these leases with respect to the right of said respective lessees to renew the same is unauthorized and void. However, I do not think that this unauthorized and void provision in these leases in any wise affects the validity of the same as leases for the authorized term of fifteen years; and in that view, the existence of said unauthorized provision should not prevent my approval of said leases as valid leases for the lawful terms thereof.

In this connection it is to be noted that inasmuch as said lessees and each of them are presumed to know the law relating to this matter, they can secure no rights against the state relying upon said unauthorized and void provisions with respect to their right to renew said respective leases.

In the view above stated, I am herewith approving said leases as lawful and valid leases for the term of fifteen years each, and to this end I have endorsed my approval upon said leases and the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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370.

APPROVAL, LEASE TO LAY GAS PIPE LINE ALONG THE BANKS OF  
INDIAN LAKE—FERDINAND W. PECK, JR.

COLUMBUS, OHIO, April 30, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a lease in triplicate, executed by you as Superintendent of Public Works, and as director of such department, leasing and demising to one Ferdinand W. Peck, Jr., the right and privilege of laying in and along the banks of Indian Lake, a gas pipe line to serve the population residing around said Lake and the islands thereof.

This lease is executed by you under the authority of Section 13970, General Code. The stated term of the lease is fifteen years. There is nothing in the provisions of Section 13970, General Code, considered alone, which fixes the authorized term of leases executed under its provisions. However, this section was enacted as a part of the act of April 12, 1889, 86 O. L. 270, and provided generally for the lease of canal land property, the term of which leases was fixed at fifteen years, and reading the provisions of this section as they were originally enacted as a part of said act of the Legislature above referred to, it seems reasonably clear that the authorized term of leases of this kind is likewise fifteen years.

Considered as a lease for a term of fifteen years, the lease here in question is in proper form and contains all that is required to protect the interests of the state in leases of this kind.

This lease, however, contains a provision giving the lessee a right to a renewal thereof for a like number of years, subject to reappraisal at the date of the renewal. There is nothing in the provisions of Section 13970, or of other sections of the General Code, which authorizes the insertion of a provision for a renewal of a lease of this kind. In view of the investment to be made by the grantee and the quasi public purpose to be served by him, such privilege of renewing a lease at the expiration of the present lease may not only be desirable from the standpoint of the lessee, but may be at that time quite just and proper.

There is, however, no authority for inserting in this lease a provision for a renewal thereof upon its expiration, and I am quite clearly of the opinion that said provision for a renewal of said lease is wholly without authority and is for that reason null and void. Said provision for a renewal of said lease being unauthorized and null and void, it does not affect the validity of the other provisions of the lease and I think said lease can be approved as a lease for fifteen years, the stated term thereof.

With this understanding, I am approving said lease and endorsing my approval thereon and on the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

371.

DISAPPROVAL, DEED TO LAND IN GOSHEN TOWNSHIP, TUSCARAWAS COUNTY, FOR THE SCHOENBRUNN MEMORIAL.

COLUMBUS, OHIO, April 30, 1929.

REV. J. E. WEINLAND, *Chairman, Schoenbrunn Committee, Dover, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, submitting for my examination and approval, a warranty deed executed by the Baltimore and Ohio Railroad Company and conveying to the State of Ohio for the purposes of the Schoenbrunn Memorial, a tract of six and eighty-seven hundredths (6.87) acres of land in Goshen Township, Tuscarawas County, Ohio.

Under the act of March 27, 1925, 111 O. L. 84, the committee provided for and appointed under the provisions of said act, is authorized to acquire such land adjoining the original site of the village of Schoenbrunn as may be necessary to properly restore and preserve the historic landmarks of said settlement. Under the further provision of said act, the purchase and title to lands acquired by said committee should be approved by the Governor and the Attorney General before such title is accepted.

I see no reason why the purchase of the land here in question should not be approved by this department, but inasmuch as there is nothing in the provisions of the act above referred to, or of any other section of the General Code touching the question, which authorizes the State of Ohio to take title to real property other than such as is free and clear of encumbrances, I do not feel that you are authorized to accept this deed or pay the purchase price therefor, until the Baltimore and Ohio Railroad Company has obtained from the mortgage trustee a release of this tract of land