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APPROVAL—CANAL LAND LEASE, STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, TO CHARLES C. STARRETT, NEWARK, OHIO, NORTH FORK FEEDER, OHIO CANAL, IN CITY OF NEWARK, LICKING COUNTY, OHIO, FOR COAL YARD, GARAGE AND GENERAL BUSINESS PURPOSES, ANNUAL RENTAL, \$100.00.

COLUMBUS, OHIO, December 29, 1938.

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

DEAR SIR: You have submitted 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 Charles C. Starrett of Newark, Ohio.

By this lease, which is one for a term of ninety-nine years renewable forever and which provides for an annual rental of \$100.00, payable in semiannual installments of \$50.00 each, during the first fifteen-year period of the term of the lease, there is leased and demised to the lessee above named the right to occupy and use for coal yard, garage and general business purposes a parcel of the lands of the North Fork Feeder to the Ohio Canal which is situated in the City of Newark, Licking County, Ohio, and which is more particularly described in the lease instrument as containing 6750 square feet excepting and reserving therefrom certain rights and easements of The Baltimore and Ohio Railroad Company.

The North Fork Feeder of the Ohio Canal in the City of Newark, Licking County, Ohio, was abandoned for canal and hydraulic purposes by an act of the 82nd General Assembly under date of March 30, 1917, 107 O. L., 512. By this act, the Superintendent of Public Works was authorized to lease the canal lands abandoned by said act; but by the terms of the act it was provided that the term of any lease executed under the authority of this act should be for not less than fifteen, nor more than twenty-five years.

Inasmuch as the lease here in question is one for a term of ninety-nine years, renewable forever, it is obvious that this lease cannot be sustained as one executed under the authority of the act of the legislature above referred to. Apparently, however, this lease is one executed under the authority of the Farnsworth Act, so-called, which was enacted by the 89th General Assembly under date of April 22, 1931, 114 O. L., 518. This act, which relates to all abandoned canal lands in this State, provides for the lease by the Superintendent of Public Works of any of such

abandoned canal lands to municipal corporations, townships, counties or other taxing districts at a nominal rental for public park or recreational purposes, subject to the condition that application is made by such political subdivision for the lease of any desired parcel of canal lands for such purposes within two years of the effective date of the act. By this act it is further provided as follows:

“Tracts of such abandoned canal property not disposed of in the manner herein provided may be leased by the superintendent of public works to responsible parties under the provisions of Section 13965 of the General Code, except the length of the term of such leases may be for ninety-nine years, renewable forever, or for a term of fifteen years, and multiples thereof up to ninety years, and that railroad rights-of-way need not be limited to lengths of two miles; leases granted for a longer term than fifteen years shall contain a clause providing for a 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 therefor shall be six per cent of the appraised value thereof for each period.”

As required by the provisions of the act above quoted, this lease instrument provides for a reappraisal by proper state authority of the parcel of land covered by this lease at the end of each fifteen-year period of the term of the lease; and it is further provided that the annual rental of the property for each succeeding fifteen-year period shall be six per cent of the appraised value of the property thus determined. And in this connection, it further appears on an examination of this lease that the provisions thereof and the conditions and restrictions therein contained are in conformity with the act of the legislature under the authority of which the same is executed, and with all other statutory enactments relating to leases of this kind. And inasmuch as it further appears that this lease has been executed in the manner required by law by you as Superintendent of Public Works for and in the name of the State of Ohio and by said Charles C. Starrett, as the lessee therein named, this lease is approved by me 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.