

him with respect to the reduction of the current rentals under this lease is approved by me as is evidenced by my approval endorsed upon the resolution which is attached to said finding, and upon the copies thereof, all of which together with your finding and the application filed by the railroad company, are herewith enclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5498.

APPROVAL—APPLICATION FOR REDUCTION OF DELIN-
QUENT RENTALS ON MIAMI AND ERIE CANAL LAND
LEASE OF TOLEDO GRAIN AND MILLING COMPANY
OF TOLEDO, OHIO.

COLUMBUS, OHIO, May 11, 1936.

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

DEAR SIR: You have submitted for my examination and approval a finding made by your immediate predecessor in office with respect to adjustments of current and delinquent rentals on certain Miami and Erie Canal lands now held under lease by the Toledo Grain and Milling Company of Toledo, Ohio. By the finding made by the then Superintendent of Public Works, the delinquent rentals under this lease, which covered the period of time between May 1, 1933, to November 1, 1935, were reduced from the sum of Thirty-seven Hundred Fifty Dollars (\$3750) to the sum of Three Thousand Dollars (\$3000), and the current rental under the lease for the period of time between November 1, 1935, and November 1, 1936, was reduced from the sum of Fifteen Hundred Dollars (\$1500) to the sum of Twelve Hundred Dollars (\$1200).

The adjustment and reduction in the amounts of the delinquent and current rentals under this lease made by the then Superintendent of Public Works were so made by him pursuant to an application therefor filed by the Toledo Grain and Milling Company under the authority of House Bill No. 467, 115 O. L., 512, and the reason assigned by the lessee for the adjustment and reduction of said rentals is stated in the application as follows:

“By reason of the abandonment of the canal, the State of Ohio is unable to perform the terms of said lease of December 30, 1912, on its part to be kept and performed in this, that it is unable and has been unable continuously since January 1, 1930,

to deliver to the lessee the use of the surplus water passing Locks Nos. 46 and 47 of the Miami and Erie Canal in the city of Toledo, Ohio, which it covenanted under said lease to furnish to the lessee at a continuous flow of not less than 4800 cubic feet per minute; and that said lessee's loss of use of said water power has materially reduced the rental value of said premises."

In this connection, it is to be noted that the lease here in question, which was executed to the Toledo Grain and Milling Company under date of December 30, 1912, was one covering not only the parcels of land covered in the lease but likewise the use of water in the canal for hydraulic purposes; and that since the abandonment of said canal at this point for canal and hydraulic purposes, the only benefits that have accrued to the lessee under this lease have been the use and occupation of the parcel of Miami and Erie Canal lands described in the lease.

In this situation, the adjustment and reduction made by the Superintendent of Public Works in the amounts of the delinquent and current rentals under this lease would seem to be justified upon legal grounds; and assuming, as I must, that the Superintendent of Public Works made the investigation with respect to this matter contemplated by the act of the legislature above referred to, I am approving the finding made by him with respect to the reductions in the delinquent and current rentals above noted, as is evidenced by my approval endorsed upon the resolution which is attached to the finding made by the Superintendent of Public Works, and upon the copies thereof, all of which together with the finding and application, are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5499.

APPROVAL—LEASE TO OHIO CANAL LAND IN TUSCARAWAS COUNTY, OHIO, TO OHIO POWER COMPANY OF NEWARK, OHIO.

COLUMBUS, OHIO, May 11, 1936.

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

DEAR SIR: You have submitted for my examination and approval a certain canal land lease in triplicate executed by your immediate predecessor in office as Superintendent of Public Works to the Ohio Power Company of Newark, Ohio. By this lease, which is one for a term of