

2848.

APPROVAL—PROCEEDINGS RELATING TO APPLICATION MADE BY
THE WILLIAM SEBALD REALTY COMPANY FOR THE CANCELLA-
TION OF A CERTAIN MIAMI AND ERIE CANAL LAND LEASE
NO. 223.

COLUMBUS, OHIO, June 22, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication enclosing for my examination and approval, the finding made by you on an application made by The William Sebald Realty Company for the cancellation of a certain Miami and Erie Canal land lease, executed to said company under date of August 12, 1926, which lease is designated in the records of your office as Miami and Erie canal land lease No. 223.

By the lease above referred to, which is one for a stated term of 15 years, and which provides for an annual rental of \$132.00, there was leased and demised to the lessee above named, the right to occupy and use for building, driveway, yard and general business purposes, a small parcel of abandoned Miami and Erie canal lands in the city of Middletown, Butler County, Ohio.

The reason assigned for the requested cancellation of this lease is that the parcel of land, covered by the lease and thereby demised to said lessee, has been taken over by the city of Middletown, Ohio, and improved for street purposes.

It appears that this action was taken by the city of Middletown, under the assumed authority of Amended Senate Bill No. 39, enacted by the 87th General Assembly, under date of April 21, 1927, 112 O. L. 388. Section 4 of said Act, which has been carried into the General Code as Section 14153-4, provides:

“All leases heretofore granted to any person, firm or corporation, and for which the rental has not been paid, shall, by the Superintendent of Public Works, be declared null and void, and all other leases, either for the use of water or lands or other purposes, shall be annulled as soon as the same can be done legally, provided that no such lease shall be annulled prior to January 1, 1929, except by agreement of all parties concerned, and all leases expiring prior to such date may be renewed to expire on January 1, 1929”.

Without entering into any discussion of the question, whether under the above quoted section of this Act, or any other provisions thereof, this lease was annulled under the principles recognized and applied by the Supreme Court of the United States in the case of *Kirk vs. Maumee Valley Electric Company*, 279 U. S. 797, determining the effect of an Act of this kind on leases for the use of water in the Miami and Erie canal, it appears that either with or without the consent of the lessee in the lease here in question, this parcel of land has been taken over by the city and used for street purposes.

Upon the facts above noted, you have found that this lessee is entitled to the cancellation of the lease here in question; and, in as much as it appears that your findings and the application for the cancellation of this lease are substantially in the form provided for and required by House Bill No. 467, 115 O. L. 512, your finding, to the effect that this lease should be cancelled, upon com-

pliance by the lessee with the conditions therein mentioned, is hereby approved by me, as is evidenced by my approval, endorsed upon the resolution, and the copies thereof, which are attached to your finding and made a part of the files relating to the cancellation of this lease.

I am herewith returning to you all of the files which you submitted to me in this matter.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2849.

APPROVAL—PROCEEDINGS RELATING TO APPLICATION MADE BY
MRS. EFFIE SEIPEL OF COLUMBUS, FOR A REDUCTION IN
RENTALS UPON A RESERVOIR LAND LEASE AT BUCKEYE LAKE.

COLUMBUS, OHIO, June 22, 1934.

HON. WM. H. REINHART, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit, for my examination and approval, certain findings made by you with respect to an application filed by Mrs. Effie Seipel of Columbus, Ohio, for a reduction in the amounts of delinquent and current rentals, under a reservoir land lease, executed to her under date of August 25, 1930, which lease is designated in the records of your office as Buckeye Lake Land Lease No. 268.

By this lease, which is one for a stated term of 15 years, and which provides for an annual rental of \$40.00, there is leased and demised to the lessee, above named, the right to occupy and use for cottage site and land purposes, the inner slope and water front and the outer slope and borrow pit adjacent thereto that is included in the westerly 50 feet of embankment Lot No. 14, east of the waste gates at Buckeye Lake.

The only reason assigned for the reductions requested in the rentals under this lease is that, by the provisions of this lease a larger rental is charged than is usually charged by your department for leases of other like properties, similarly situated. In other words, it appears that the parcel of land, covered by this lease, was appraised in an amount substantially larger than the appraisals made of other Buckeye Lake properties of like quantities in the same location.

By the finding made by you, it appears that the amount of delinquent rental due and unpaid under this lease is the sum of \$20.00. No reduction is made by you with respect to the amount of this delinquent rental.

However, by the finding above referred to, you have made a reduction in the current rental under this lease for the period from May 1, 1934, to May 1, 1935, from the sum of \$40.00 to the sum of \$30.00.

Upon examination of your findings and of the application for the reduction of the rentals under this lease, I find that the same are substantially in the form provided for and required by House Bill No. 467, 115 O. L. 512. In this situa-