

1354.

APPROVAL, LEASE TO ABANDONED MIAMI AND ERIE CANAL LAND  
IN MIAMI COUNTY—MIAMI VALLEY RAILWAY COMPANY.

COLUMBUS, OHIO, December 31, 1929.

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

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate executed by the State of Ohio, through you, as Superintendent of Public Works, by which there is leased and demised to the Miami Valley Railway Company for a term of ninety years permission to maintain and operate a railway of standard gauge with poles, wires and other devices necessary for the operation thereof over certain portions of the berme embankment, and certain state lots of the abandoned Miami and Erie Canal in Miami County, Ohio, between stations 7919 and 8230-80 as shown by the plats of the survey of said canal property made under the direction of the Superintendent of Public Works by H. E. Whitlock in 1915, which property so leased and demised between the stations above indicated is in said lease more particularly delineated and described. Also a right-of-way for a single track railway beginning at the southerly line of a tract of land deeded to the State of Ohio by David Elliot under date of December 20, 1836, located in Section 8, Town 5 South, Range 6 East, at Eldean, Concord Township, Miami County, Ohio, and running thence northwesterly 774 feet, more or less, to the north line of said tract, subject, however, to the rights of the Allen and Wheeler Company under a lease granted November 18th, 1926; also the right of the B. & O. Railway to maintain and operate a switch track from The Piqua and Troy Branch Railroad crossing the tracks of the Miami Valley Railway Company, to the plant of The Allen and Wheeler Company. Also the right to maintain and operate a single track railway commencing at the southerly line of a tract of land deeded to the State of Ohio by David Elliott under date of September 26, 1837, located in Section 32, Town 6 South, Range 6 East, Washington Township, Miami County, Ohio, and running thence northwesterly 560 feet to a point in the west line of said canal property that is 53 feet north of the north line of said tract of land, and being the same property covered by a lease granted to The Miami Valley Railway Company, under date of January 4th, 1913, which lease automatically terminated January 4th, 1928. Said lease provides for a rental of six per cent upon the appraised value of the property leased with provision for reappraisal at the end of each fifteen year period during the term of said lease.

It appears from the recitals of said lease that the property of the state covered by said lease is now occupied by said lessee under a lease granted to it by the State of Ohio under date of December 18, 1918, which lease is presumably one for a period of fifteen years from said date.

In this situation it is pertinent to note the provisions of Section 9 of the Act of March 25, 1925, 111 O. L. 208, under the authority of which the lease here submitted for my approval was executed. This section provides in part as follows:

“As soon as the appraisement of the canal lands applied for by municipalities or other legal subdivisions of the state has been completed, the Superintendent of Public Works, subject to the approval of the Governor and Attorney General, shall proceed, subject to all rights under existing leases, other than as hereinafter specified, to lease the canal land herein abandoned for canal purposes, in strict conformity with the provisions of this act, but the owner of an existing leasehold for canal lands, which prior to January 1, 1925, has been improved by the construction of railway tracks thereon, or by the erection

of substantial buildings thereon, other than buildings erected for use of gasoline and oil filling stations, may file an application within one year from the date from which this act becomes effective with the Superintendent of Public Works for permission to surrender his present leasehold and take a new lease thereon under the terms of this act, but no renewals of leases of canal property which has not been improved, as hereinbefore stated, prior to January 1, 1925, shall be made."

The lease here in question does not contain any recital showing that the application therefor was made by the Miami Valley Railway Company within the period of one year from July 14, 1925, as provided for in the above quoted provisions of Section 9 of said act. However, in response to my inquiry upon this point, you advise me by communication of even date herewith that the application for this lease was filed by said named lessee on July 12, 1926, within the period of one year from the date when said act went into effect. It follows, therefore, that under the provisions of said act, said Railway Company is entitled to a lease for the term and under the conditions provided for in the act of the General Assembly above noted, and upon the approval of the same to surrender the existing lease under which it occupies the property above described.

A careful examination of said lease shows that the same is in conformity with the provisions of the act under the specific authority of which said lease is executed, and with other statutory provisions relating to leases of this kind.

Said lease is therefore approved by me as to legality and form as is evidenced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1355.

FLOODED LANDS—CONTIGUOUS TO CHANNEL OF FEEDER TO OHIO  
CANAL—TITLE HELD NOT TO BE VESTED IN STATE.

**SYLLABUS:**

*Where, in the construction of a feeder to a canal as a part of the canal system of the state, no bank is thrown up or constructed on one side of the channel of such canal feeder for a distance of one-half mile or more with the result that thereafter a strip of comparatively low land contiguous to the channel of the canal feeder is flooded by water flowing from the canal channel, does not effect an appropriation of the lands flooded so as to vest the title to such lands in the state; nor is such appropriation effected by the fact that the water in the basin thus formed is occasionally used for the purpose of turning canal boats that are in service on said canal feeder and on the canal or canals with which such feeder connects.*

COLUMBUS, OHIO, December 31, 1929.

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

DEAR SIR:—This is to acknowledge receipt of a communication from you which reads as follows: