

script relative to this issue was approved by this office in an opinion rendered to the State Teachers Retirement Board under date of December 4, 1933, being Opinion No. 1951.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

537.

LEASE—CANAL LAND, STATE TO TOLEDO AND CINCINNATI RAILROAD COMPANY OF BALTIMORE, MARYLAND, DESIGNATED OHIO CANAL PROPERTY, CHILLICOTHE, ROSS COUNTY.

COLUMBUS, OHIO, May 5, 1939

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 the State of Ohio, acting through you as Superintendent of Public Works, to The Toledo and Cincinnati Railroad Company of Baltimore, Maryland.

By this lease, which is one for a term of ninety-nine years, renewable forever, and which provides for the payment by said grantee of an annual rental of \$30.00, payable in semi-annual installments of \$15.00 each, there is leased and demised to the grantee above named the right to occupy and use for necessary railroad right of way purposes, and purposes incidental thereto, that portion of the abandoned Ohio Canal property, in the city of Chillicothe, Ross County, Ohio, near Renick Tower, that is described as follows:

Beginning at the point where the westerly line of the lands of the Ohio Canal is intersected by the center line of the Wellston Line of The Baltimore and Ohio Railroad at station 4254+29.6; thence with said westerly line of canal land, by the following two courses: north $57^{\circ} 04'$ west, fifty-three and six-tenths (53.6') feet; thence north $32^{\circ} 16'$ west, thirty and one-tenth (30.1') feet; thence parallel to and fifty (50') feet at right angles from said center line, intersecting the base line for canal property at station 5+19.5; thence south $85^{\circ} 51'$ east, one hundred seventy-seven and five-tenths (177.5') feet; thence intersecting said center line at station 4255+84.1, south $35^{\circ} 45'$ east, one hundred thirty and six-tenths (130.6') feet; thence parallel to

and fifty (50') feet at right angles from said center line, intersecting said base line at station 3+74.5, north 85° 51' west, one hundred nine and nine-tenths (109.9') feet to the westerly line of said canal lands; thence with said westerly line of canal lands, the following two courses: north 42° 16' west, eight and eight-tenths (8.8') feet; thence north 57° 04' west ninety-one and two-tenths (91.2') feet to the point of beginning, containing fifteen thousand, one hundred forty-five (15,145) square feet, more or less, and being so much of said abandoned Ohio Canal property, including the full width of the bed and banks thereof, as lies between parallel lines fifty (50') feet on each side of center line of The Baltimore and Ohio Railroad track, as now located, measured at right angles to said center line, excepting and reserving to the city of Chillicothe, Ohio, the right to maintain the existing sewer located beneath the bed and banks of said canal property.

The parcel of canal land here in question was abandoned for canal purposes by an act of the 79th General Assembly under date of June 7, 1911, 102 O. L., 293. Although under the provisions of this act and under the later and more general provisions of Section 464, General Code, which confer upon the Superintendent of Public Works the power and authority formerly possessed by the Board of Public Works as to the lease of canal lands, you are authorized to execute leases of the Ohio Canal lands abandoned for canal purposes by this act, such leases may not be for a term less than fifteen years or more than twenty-five years.

In this situation, your authority to execute the lease here in question must be found, if at all, in the provisions of Section 1 of the Farnsworth Act, so called, enacted by the 89th General Assembly under date of April 22, 1931, 114 O. L., 518. This act by its terms applies to all canal lands in the state which have been abandoned for canal purposes. And the primary purpose of the act was to enable municipal corporations and other political subdivisions and taxing districts to acquire by lease such abandoned canal lands for park purposes. And in this connection, it is therein provided that leases of such canal lands to municipal corporations and other political subdivisions for park purposes should be on applications therefor made by the political subdivisions within two years from the effective date of the act.

More immediately pertinent to the question of your authority to execute this lease to the lessee above named and for the term therein stated, are the provisions of the second paragraph of Section 1 of said act (Sec. 464-1, G. C.) which reads 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 provi-

sions 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 reappraisalment 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."

Consistent with the terms of this statute, this lease is for a term of ninety-nine years, renewable forever, subject to the payment by said lessee of an annual rental of \$30.00 during the first fifteen-year period of the term of the lease, with a further provision that the leased property shall be appraised for rental purposes at the end of each fifteen-year period during the term of the lease for the purpose of determining the rental to be paid during each of such subsequent fifteen-year periods.

Upon examination of the lease, I find that the same has been properly executed by you as Superintendent of Public Works, acting for and in the name of the State of Ohio, and by The Toledo and Cincinnati Railroad Company, the lessee therein named, acting by the hands of its Vice-President and Secretary pursuant to the authority of a resolution of the Board of Directors of said company adopted under date of April 24, 1939. I further find that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the above noted and other statutory provisions relating to leases of this kind. I am accordingly approving the lease as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

538.

CONTRACT—STATE WITH CITY OF GALLIPOLIS, IMPROVEMENT, SECTION GALLIPOLIS OHIO RIVER ROAD, STATE HIGHWAY No. 7, GALLIA COUNTY.

COLUMBUS, OHIO, May 5, 1939.

HON. ROBERT S. BEIGHTLER, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval as to form and