

State of Ohio through you, as Superintendent of Public Works, as director thereof, leasing and demising to one Roy Affolter a certain parcel of Ohio canal property located in Dover Township, Tuscarawas County, Ohio, and more particularly described in said lease. This lease I assume is one executed under the authority of Section 13965, General Code, which seems to require as a condition to the right to lease canal lands that a finding be made that the lease of such lands will not materially injure or interfere with the maintenance and navigation of the canal. The presumption of regularity which attends your acts as a public officer obviates the necessity of a recital in the lease that a finding of this kind has been made. Assuming that such finding has been made and entered upon your records, and finding as I do that said lease is otherwise in proper form and in accordance with the law, the same is hereby approved.

You will please find enclosed herewith said lease in triplicate, with my approval endorsed thereon.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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149.

TOWNSHIP TRUSTEES—NO RIGHT TO ISSUE BONDS FOR ROAD CONSTRUCTION WITHOUT VOTE OF ELECTORS.

*SYLLABUS:*

*A board of township trustees may not issue bonds to pay the township's portion of the cost of constructing township roads without a vote of the electors as provided in Section 2293-17, General Code.*

COLUMBUS, OHIO, March 5, 1929.

HON. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“As prosecuting attorney of Marion County, Ohio, I desire an opinion upon the following proposition:

The joint board of township trustees of Tully Township, Marion County, Ohio, and Washington Township, Morrow County, Ohio, are attempting to build a joint township road under Sections 3298-1 et seq. of the General Code of the State of Ohio. Tully Township proposes to issue bonds to pay the township's share of the costs, which is three-elevenths of the cost of the improvement under Sections 3298-15d and 3298-15e. The question arises as to whether or not they may proceed under Section 3298-15e without submitting the question of issuing bonds to a vote of the electors, in view of the provision of existing Section 2293-17 providing for the limitation of the net indebtedness of townships. Section 3298-15e apparently has not been repealed, as it is referred to in Section 6921-1, which provides for compensation and damages and bond issue when the cost and expenses of an improvement are paid in part by a county and in part by a township in which the improvement is situated. In the present case, the township trustees of

Tully Township have provided for issuing bonds under Section 3298-15d and 3298-15e, but did not submit the question to a vote of the electors.

Kindly advise as to the correct proceedings under the above statutes."

Section 3298-15e, in so far as is pertinent, reads as follows :

"The township trustees, in anticipation of the collection of such taxes and assessments, *or any part thereof*, may, whenever in their judgment it is deemed necessary, sell the bonds of said township in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damages, costs and expenses of such improvement. \* \* \* Prior to the issuance of such bonds the township trustees shall, *in case all or any part of said bonds are to be redeemed by special assessments*, provide for the levying of a tax upon all the taxable property of the township to cover any deficiencies in the payment or collection of any such special assessments. \* \* \* "

(Italics the writer's.)

There is apparently here a grant of authority to township trustees to issue bonds not only in cases where the total costs of any improvement are to be paid by assessments, but also in cases where only a part of the cost of such improvements are to be paid by assessment.

While Section 3298-15e, General Code, supra, has not been repealed, there is apparently a limitation upon the power of township trustees to issue bonds in the enactment of Section 2293-17, General Code, being part of the Uniform Bond Act, 112 O. L. 372, which section is as follows :

"The net indebtedness created or incurred by a township, exclusive of the bonds excepted in Section 2293-13 of the General Code, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors."

In an opinion of this department under date of March 19, 1928, to Hon. John E. Priddy, prosecuting attorney, Findlay, Ohio, being Opinion No. 1862, copy of which is enclosed, there was a consideration of the question of whether or not, since the enactment of the Uniform Bond Act, township trustees could issue bonds to pay the township's portion of the cost of constructing roads within the township. My predecessor held in the affirmative, provided bonds so issued by township trustees did not increase the net indebtedness of the township to an amount in excess of the two per cent limitation provided for in Section 2293-17, General Code, supra, and further provided that the issuance of such bonds was authorized by a vote of the people as provided in said section.

There are very clearly two distinct limitations set forth in said Section 2293-17, curtailing the authority of township trustees to issue bonds in anticipation of the collection of taxes and assessments. The first limitation has to do with the percentage of said indebtedness created or incurred and excepts from such computation bonds or notes issued in anticipation of the levy or collection of special assessments, county bonds issued in anticipation of the levy or collection of township taxes, certain notes and final judgment bonds. In other words, with these exceptions the net indebtedness created or incurred by a township shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation. The second limitation set forth in said Section 2293-17, General Code, is that no indebt-

edness created or incurred by a township which does not fall within one of the exceptions therein set forth shall be incurred unless authorized by the vote of the electors. The situation which you present in your letter is one whereby three-elevenths of the costs of the road improvement is to be borne by the township and paid for by tax levies. This does not come under one of the exceptions set forth in Section 2293-17, and therefore, such indebtedness may not be incurred unless authorized by the vote of the electors.

In view of the foregoing and in view of the opinion of my predecessor cited above, in which I concur, I am of the opinion that a board of township trustees may not issue bonds to pay the township's portion of the cost of constructing township roads without a vote of the electors as provided in Section 2293-17, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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150.

APPROVAL, LEASE TO OHIO CANAL LAND IN PIKE COUNTY, OHIO.

COLUMBUS, OHIO, March 5, 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 and Director thereof, leasing and demising to one Walter L. George of Omega, Ohio, a certain parcel or tract of Ohio Canal property located in the village of Omega, Jackson Township, Pike County, Ohio, which parcel of land is more particularly described in said lease.

An examination of the lease in question shows that the same is in conformity with the provisions of Section 13966, General Code, providing generally with respect to the leasing of canal lands, with Sections 14203-12, et seq., General Code, relating to the release of the abandoned portions of the Ohio Canal, and with other provisions of the General Code relating to the leasing of lands owned by the State of Ohio.

Said lease is therefore approved and my approval is herewith endorsed on said lease and the copies thereof, which are herewith returned.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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151.

APPROVAL, LEASE TO LAND IN PERRY TOWNSHIP, STARK COUNTY, OHIO, FOR USE OF THE MASSILLON STATE HOSPITAL.

COLUMBUS, OHIO, March 5, 1929.

HON. H. H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a lease executed by one W. F. Miller, of Massillon, Ohio, by which he leases and demises to the De-