

3845.

SCHOOL AND MINISTERIAL LANDS—WITHDRAWN FROM SALE OR LEASE BY STATE SUPERVISOR MAY BE LEASED BY STATE TO AGRICULTURAL DEPARTMENT.

School and ministerial lands withdrawn from sale or lease by the State Supervisor under section 3185 G. C. may be leased by the state to the Agricultural Department for the term of ninety-nine years renewable forever, under the provisions of section 3186 of the General Code.

COLUMBUS, OHIO, December 30, 1922.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent request reading as follows:

“The State Agricultural Department has made application for a 99-year lease renewable forever on the Colerain township, Ross County, Ohio, school lands.

Said lands are not now under lease by reason of expiration of lease and otherwise and have been withdrawn from sale or lease awaiting action of said State Agricultural Department.

Question. Can the State Auditor, legally, grant said 99-year lease renewable forever to said State Agricultural Department. Secs. 3185, 3186, 3203-4, 3203-6, G. C.”

Pertinent to your question as to the authority of the State Auditor to grant a ninety-nine year lease renewable forever to the State Agricultural Department, of school lands in Colerain township, Ross county, Ohio, it may be noted that Sec. 3203-6 G. C., under the general leasing provisions relative to school and ministerial lands, provides the terms of years for which such leases may be executed, limiting town lots to terms not exceeding fourteen years, and unimproved agricultural lands for terms not exceeding twenty years, or if improved for terms not exceeding ten years.

It would seem however, that the limitations specified by these provisions are not applicable to school and ministerial lands withdrawn from sale or lease, since Sec. 3204-4, specifically exempts such lands from the operation of said section.

On the other hand Secs. 3185 and 3186 G. C. respectively provide:

“Section 3185. Whenever any lease to such lands expires, or the state recovers the possession of any such lands by forfeiture or otherwise, such lands may be, by the state supervisor, withdrawn from sale or lease until such time as the state agricultural department shall have had reasonable opportunity to examine such lands and determine whether the same are desirable for experimental purposes, or for reforestation purposes.”

“Section 3186. Whenever such lands so withdrawn from sale or lease are by the state agricultural department found to be desirable for experimental or reforestation purposes it may notify the state supervisor thereof,

whereupon the state supervisor shall cause said lands to be appraised as in other cases. Thereupon the state agricultural department shall advise the state supervisor whether it desires to purchase the fee simple title of such lands or to lease the same, and for what term such lease is desired. If the state agricultural department desires the fee simple title thereto, and pays the state supervisor for the benefit of the trust the sum of the appraised value thereof, the state supervisor shall prepare a deed in fee simple therefor and present the same to the governor for execution. Such deed shall be executed and delivered in the same manner as other deeds in fee simple for school and ministerial lands are executed and delivered. If the State agricultural department desires to lease such lands, the state supervisor shall execute a lease therefor, for such term of years as may be desired by said state agricultural department, upon the conditions as to the annual rents reserved, reservations and reappraisements as in other cases herein provided, and said state agricultural department is authorized and empowered to execute and accept delivery of leases."

It is apparent that the two sections quoted supra, authorize the leasing of such lands by the State Supervisor, or Auditor, to the State Agricultural Department for such term of years as may be desired by said State Agricultural Department, upon the condition as to annual rents reserved, reservations and reappraisements as provided in other cases, wherein said lands are leased by the State.

It would seem then that if the State Agricultural Department desires a ninety-nine year lease, renewable forever, upon the lands in question and such a term is acceptable to the State Supervisor, no reason can be seen why such a lease may not be legally executed by the State Auditor, provided that reservations are made therein of all oil, gas, coal and other minerals, timber, etc., as provided by Secs. 3184 and 3203-7 of the General Code.

In view then of the fact that the statutes place no limitation upon the term for which the State may lease school and ministerial lands withdrawn from sale or lease for the purpose provided by Section 3185 G. C., it would follow that affirmative answer to your question is found in the provisions of Section 3186 of the General Code.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3846.

DEPUTY SHERIFF—CANNOT BE APPOINTED BY JUSTICE OF PEACE AS SPECIAL CONSTABLE IN CRIMINAL CASES—APPROVAL BY JUDGE OF COMMON PLEAS COURT NECESSARY FOR DEPUTY SHERIFF—WHEN APPROVAL NOT OBTAINED STATUS OF DEPUTY AND HOW FEES DISPOSED OF—SO-CALLED DEPUTY MAY BE APPOINTED SPECIAL CONSTABLE.

1. *A "regular" deputy sheriff cannot be legally appointed by a justice of the peace as a special constable in criminal cases.*