

3375.

APPROVAL, LEASE FOR RIGHT TO TAKE WATER FROM OHIO CANAL
FOR HOT-HOUSE IRRIGATION PURPOSES—M. S. YODER AND
IRA D. YODER.

COLUMBUS, OHIO, June 30, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you enclose for my examination and approval a certain pipe lease, so-called, executed by you as superintendent of public works and as director of said department, by which there is granted to M. S. Yoder and Ira D. Yoder of Barberton, Ohio, the right, for a term of five years to insert a six inch pipe to the level of the Ohio Canal next above lot No. 1 of the summit of said Ohio Canal, and thereby to take from said canal, water for the purpose of hot-house irrigation.

Upon examination of said lease, which is one calling for an annual rental of \$500.00 payable in advance on the first days of May and November of each year during the term of said lease, I find that this lease has been properly executed by you in your official capacity as superintendent of public works, and director of said department, and by the lessees above named. I likewise find that the provisions of said lease and the conditions, limitations and reservations therein set out are in conformity with sections 431 and 14009, General Code, under authority of which this lease is executed, and with other sections of the general code relating to leases of this kind.

I am accordingly approving said lease as to legality and form; and my approval is endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3376.

OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME—WHEN BOARD
OF TRUSTEES MAY DISCHARGE CHILDREN FOR ADOPTION.

SYLLABUS:

Under the provisions of section 1933 of the General Code, and its related sections, the Board of Trustees of the Ohio Soldiers' and Sailors' Orphans' Home may discharge a child admitted thereto for the purpose of permitting said child to be adopted, if in the judgment and discretion of said board said action is for the benefit of the child.

COLUMBUS, OHIO, June 30, 1931.

HON. HAROLD L. HAYS, *Superintendent, Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“We often receive requests for the adoption of children in the Ohio Soldiers' and Sailors' Orphans' Home. According to our understanding of the state law no children are permitted to be adopted from this Home.

The Board of Trustees would like to know if it would be legal to discharge a child for adoption. At the present time we have two requests for adoption and we would appreciate as early an opinion as is possible.”

Sections 1931 to 1946-3, inclusive, of the General Code, relate to the establishment of the Ohio Soldiers' and Sailors' Orphans' Home, and provide for the governing of such institution. Sections 1932 and 1932-1, General Code, provide for the reception of children by the trustees of such home under such rules and regulations as they adopt, defining the children who are entitled to such admission. Section 1933, General Code, important to consider in connection with your inquiry, reads:

"Unless for good cause sooner discharged any child admitted to the Ohio Soldiers' and Sailors' Orphans' Home shall be supported and educated until eighteen years of age, and any child not eighteen years of age, at the opening of any school year, may be retained until the close of that school year."

Section 1944, General Code, provides:

"When, in the opinion of the trustees, the best interests of pupils would be subserved thereby, they may secure homes for them in private families upon such terms as they agree upon, reserving the right to replace them in the home if they deem it for their best interests."

Section 1946-3, General Code, provides that the Superintendent of the Ohio Soldiers' and Sailors' Orphans' home shall be the guardian of the estate of all minors duly admitted to said home who have no other duly appointed legal guardian.

From the foregoing, it will be observed, that by the terms of Section 1933, General Code, the board of trustees would have power to discharge a child admitted to the home for good cause before it arrives at the age of eighteen years.

While Section 1944, General Code, authorizes the placing of such child with a private family, it would appear that any such arrangement carries with it the reservation that the trustees of the home may return the child to the home.

It must be confessed that the authority to make an absolute release is at best inferential since it is based upon the phrase "unless for good cause sooner discharged" contained in Section 1933, *supra*. Bearing in mind, however, that the purposes of these laws should be liberally construed so as to best provide for the welfare of the wards of the state, it must follow that the right to make an absolute discharge exists under proper circumstances. This is so because those who are eligible to admission include the children of indigent soldiers, sailors, marines and nurses who served in the military or naval forces of the United States, and it surely would not be the intent of the law to prevent the return to their parents of inmates of the home when those parents should by a change of circumstances be fully able and competent to provide the means of support and education. Your question is, however, whether a discharge may be made for the purpose of adoption, where the circumstances are such as to convince you that such course will be for the best interests of the child. I see nothing in the language of Section 1944, *supra*, which precludes such right. That section has reference to instances in which it is desirable to place children with private families under circumstances which do not include formal adoption. While the statute is silent as to the right to discharge for formal adoption. I believe the phrase quoted from Section 1933, constitutes sufficient justification for the holding that such a right exists.

In the event that you determine to take this course, I feel that it would be incumbent upon you to see that all of the statutory procedure relative to formal

adoption is followed, and to this end it would be proper for you to make the discharge contingent upon the institution and culmination of the formal adoption proceedings. It is perhaps unnecessary for me to set forth herein the various methods by which adoption may be accomplished, since the statutes, commencing at Section 8024, of the General Code, set forth in detail the procedure to be followed.

I do desire, however, to call your attention to the fact that by the provisions of Section 8025, of the General Code, sub-paragraph (e) consent to the adoption of a child may be given by his next friend appointed as provided in Section 8024-1, of the Code, in the event that the parents are dead or their residence unknown and there is no legal guardian of the person of the child. This particular portion of the section would be applicable in the event that the child which it is desired to have adopted from the home is an orphan. Under the authority of Section 8024-1, General Code, the Probate Court may designate any institution or agency approved by the State Board of Charities to act as next friend and give consent. Since it is my understanding that your institution has received the approval of the State Board of Charities it would be proper for the Probate Court to appoint your institution to make the necessary investigation to determine whether or not the proposed foster parents and their home are suitable for the child. By this method you would have contact with the proceedings so as to enable you to see that everything is properly done for the welfare of the child.

Of course if there are living parents, the provisions of Section 8025 of the Code require that their consent to such adoption proceedings be first had. It is unnecessary to detail all of the remaining steps incident to adoption, since as I have before stated they are adequately set forth in the sections to which reference has been given.

I am accordingly of the opinion that the Board of Trustees of the Ohio Soldiers' and Sailors' Orphans' Home has the authority, under the provisions of Section 1933, of the General Code, and other related sections, to discharge a child admitted thereto for the purpose of permitting such child to be adopted, if in the judgment and discretion of said board, such action is for the benefit of the child.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3377.

COUNTY COMMISSIONERS — CIRCUMSTANCES UNDER WHICH MONEY MAY OR MAY NOT BE APPROPRIATED FOR PAYMENT OF INDEBTEDNESS OF COUNTY AGRICULTURAL SOCIETY ON ITS LEASED REALTY—RIGHT OF COUNTY TO SUCCEED TO REMAINDER OF LEASE AFTER PAYMENT OF INDEBTEDNESS, DISCUSSED.

SYLLABUS:

1. *County commissioners may, within the limitations of Section 9887, General Code, appropriate money for the purpose of paying the pre-existing indebtedness of a county society, where said society holds a lease for not less than twenty years upon lands for the purpose of holding fairs. The fact that an annual exhibition is not held is not necessarily determinative of its right to exercise such power.*

2. *Where it is the purpose of a county society to cease holding fairs, the*