

3410.

CANAL LANDS—RIGHT OF STATE TO RENTALS FROM LEASES OF
LANDS ABANDONED BY ACT, 109 O. L. 367, TERMINATED—SPECIAL
ACT FOR CITY OF LOGAN.

With the going into effect of an act passed by the General Assembly on April 29, 1921, 109 O. L. 367, the right of the state to rentals from leases of lands abandoned by said act for canal purposes, terminated.

COLUMBUS, OHIO, July 28, 1922.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—You have recently written to this department as follows:

“By an act of the General Assembly passed April 29, 1921, (see O. L. 109, page 368) the city of Logan was given permission to enter upon, improve and occupy forever, for sewerage and drainage purposes, that portion of the Hocking Canal situated within the corporate limits and with the further authority to sell such portions as are not required for such purposes.

Nothing whatever is said in this act relating to the existing leases of which there were a goodly number at the date of the passage of the act. These lessees are anxious to continue as tenants of the state, while the city of Logan contends that these leases, or rather, the land embraced by them, has passed into the control of the city. We will greatly appreciate an opinion from you setting forth the respective rights of the state and city.”

The act to which you have reference reads as follows:

“Section 1. That the portion of the Hocking canal situated within the corporate limits of the city of Logan, Hocking county, Ohio, be and the same is hereby vacated and abandoned for canal purposes.

Section 2. That there is hereby granted to said city of Logan the authority and permission to enter upon, improve and occupy forever, for sewerage and drainage purposes, that portion of the Hocking canal situated within the corporate limits of said city.

Provided, however, that said city shall have the right to dispose of any portion of said canal that is not so occupied and used, or required for the purposes aforesaid, in such manner, as said city of Logan, Ohio, by its duly constituted authorities shall determine; provided, however, that in the sale or disposition thereof, the owners of property abutting thereon shall have the first right and option to purchase the same.

Provided further that any portion of the said abandoned canal property that is not so used or occupied, as aforesaid, or disposed of by said city, as aforesaid, at the end of ten years from the date of the passage of this act shall immediately revert to the state of Ohio; and provided further that if at any time the state of Ohio shall have an opportunity to lease a right of way over the abandoned Hocking canal property between Lancaster, Ohio, and Nelsonville, Ohio, it may include a right of way over the canal property herein conveyed even though the same is used for sewerage and drainage purposes, or has been disposed of as aforesaid, unless said city of Logan shall provide another practicable right of way, approvable by the state of Ohio

over and through said city, upon such terms as said state may accept in lieu thereof.

Section 3. That whatever title and interest remains in the state of Ohio in that part of the Hocking canal vacated and abandoned by section 1 of this act are hereby relinquished, transferred and conveyed to the said city of Logan, Ohio."

It is presumed that the point in which your department is immediately interested is whether the right of the state to the rentals which it had been collecting by virtue of the leases in question terminated with the becoming effective of the act quoted.

The title of the state to its canal lands is a fee simple title. (State ex rel. vs. Railway, 53 O. S. 189; Haynes vs. Jones, 91 O.S. 197). This being so, the clear intent of section 2 of the act quoted is to vest in the city of Logan such title as will enable it to convey in fee simple the portion of the canal lands abandoned by the act; subject, of course, to the primary sewerage and drainage use, to the reversionary condition as to unsold lands, and to the right of way reservation, respectively specified in section 2. Such an intent of itself seems inconsistent with the idea of a further reservation of lease rentals to the state, when no express reservation to that end appears in the act. But any doubt on that score is entirely removed by the terms of section 3. That section makes conveyance to the city of the entire residuary title and interest of the state, and hence leaves no foundation for the continued collection of the lease rentals.

It may be noted in passing that the act quoted follows the general form of an earlier act in 108 O. L. 691, authorizing the city of Nelsonville to use certain canal lands for street and other purposes. That the latter act is inconsistent in its provisions as to the residuary title was pointed out in an opinion of this department (No. 2954) directed to Hon. W. B. Bartels, prosecuting attorney, Athens, Ohio, under date March 28, 1922, copy of which is enclosed; but the inconsistency there noted has been avoided in the later act, now under discussion, by the use of the clause "or disposed of by said city." as underscored in the quotation above.

You are therefore advised that with the becoming effective on August 17, 1921, of the act quoted, the right of the state to rentals from leases of lands abandoned by the act for canal purposes, terminated.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3411.

TAXES AND TAXATION—FALSE RETURN OR FRAUDULENT EVASION OF DUTY TO MAKE RETURN—COUNTY AUDITOR NOT RESTRICTED TO FIVE YEARS IMMEDIATELY PRECEDING IN PLACING OMITTED TAXES ON DUPLICATE—SECTION 5398 G. C. CONSTRUED.

In case of a false return for taxation or a fraudulent evasion of the duty to make a return or statement for taxation, the county auditor is not restricted to the five years immediately preceding his inquiries and corrections in placing omitted taxes on the duplicate under section 5398 G. C.

COLUMBUS, OHIO, July 28, 1922.

HON. R. S. PARK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—In your letter of recent date you state that T. died a resident of