

trative convenience in the issuing of navigation papers in cases where collectors are inaccessible for the granting of clearances.

Your third question may be answered by the quotation of section 416, which reads as follows:

“The superintendent of public works of Ohio shall regulate the rate of tolls to be collected on the public works of the state, and shall fix all rentals and shall collect or cause to be collected all tolls, rents, fines and all revenues arising from whatsoever source in the public works of Ohio.”

So far as has been found, there are no statutes in existence specifying rates of toll for freights. The original rates and tolls which you speak of in your letter were undoubtedly those fixed by the Board of Public Works as an administrative matter. At one time the statutes provided for toll rates for passengers (Chase's Statutes, Vol. 3, p. 1651), but as already indicated, no similar provisions have been found as to freight rates and tolls. It follows that by virtue of section 416 G. C., your department is authorized to fix rates and tolls.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3010.

CANAL LANDS—DISAPPROVAL OF LEASE FOR PRIVILEGE OF TAKING ICE, SAND AND GRAVEL FROM SAID LANDS.

Disapproval of proposed lease for privilege of taking ice, sand and gravel from canal lands.

COLUMBUS, OHIO, April 21, 1922.

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

GENTLEMEN:—You have recently submitted to me for examination an instrument entitled “Canal Land Lease” proposing to grant to The Grand Rapids Supply Company:

“The exclusive privilege of cutting ice and taking sand and gravel from the slack water pool of the Maumee river for one and one-half miles above the dam at Grand Rapids in Lucas and Wood counties, Ohio, excepting and reserving therefrom the right of abutting land owners to cut and remove not to exceed ten (10) tons of ice for family use only, and likewise to take sand and gravel in front of their premises, for use on their own grounds.”

The paragraph just quoted from the instrument is followed by others which need not be here quoted, except to say that one of the provisions made is that The Grand Rapids Supply Company is to pay the state seven and one-half cents per ton for all ice cut and stored, and seven and one-half cents per ton for all sand and gravel taken. The instrument contains further provisions to the effect that the term of the grant is for fifteen years.

After careful consideration, I am unable to give my approval to the instrument in the form submitted.

As already indicated, the instrument is in the form of a lease. There are provisions in the canal laws for the leasing of state canal lands for periods of fifteen years at a rental equalling six per cent per annum of the valuation of the lands. Sections 13965 et seq. There are also statutes permitting the leasing for terms not exceeding twenty-five years, of surplus waters "for hydraulic or other purposes"; sections 14009 et seq. and section 431. But I have been unable, after a very careful search, to find any specific statutory authority for the making of a lease for any given term covering the right to take ice, sand or gravel. Such being the case, it is my opinion that your department is without authority to bind the state through the medium of a lease in the form submitted.

On the other hand, I do find that section 13938 G. C. makes provision as follows:

"Sec. 13938. Permission may be granted to any person or persons, or body corporate, by the board of public works, to enter upon and take ice from any reservoir, or surface of any water under the control of the public works of this state, and draw water off the canals of the state for the purpose of flooding ice ponds, or other purposes, at a price to be fixed by the board of public works, upon the following conditions:

First—When the water so to be drawn off is not needed, and is over and above what is necessary for navigation and hydraulic purposes already leased.

Second—Such water to be drawn off under and by the direction of the chief engineer of the public works, and at such times and in such quantities as he may from time to time determine.

Third—Such person shall not, in any manner, during any portion of the year, cultivate any of the land to be so flooded.

Fourth—A bond in the penal sum of twenty-five hundred dollars must be executed to the state of Ohio, with good and sufficient security, conditioned for the faithful performance of the obligations herein imposed; and said bond is to be approved by the said board of public works, and to be filed with the treasurer of state by said board. That any person or persons or body corporate, who shall enter upon any portion of the canals of this state or in any basin, wide water, or surface of any water under the control of the public works, reservoir, or pond, belonging to or used in connection with the canals of this state, without permission from the board of public works, for the purpose of cutting or carrying away ice from said canals or waters aforesaid, for the purpose of profit, shall be deemed guilty of misdemeanor and be liable as hereinafter provided; in case of lessees of water, to be used for manufacturing purposes, it shall not be lawful for any such lessee, or assignee under said lessee, to use, or allow to pass through their mills or other hydraulic works, a greater quantity of water than the amount specified in their lease, said quantity to be determined by the chief engineer of the public works."

This section is part of an act found in 76 O. L. 189, the provisions of which are now comprised in sections 13937 to 13942 G. C. Said act, in addition to the provisions found in the section just quoted, provides penalties for violation of any of the terms of the act and lays down certain administrative provisions to govern the board of public works (the predecessor of the superintendent of public works). In my opinion, said section 13938 confers authority upon your department to enter into a contract embodying permission for the taking of ice. However, it does not

specifically vest authority in your department to grant an exclusive right for fifteen years. It will have been noted that a bond is mentioned in the statute; but it would appear that such bond is to cover the condition of drawing off water from the canals for the purpose of flooding ice ponds and other purposes, rather than the condition of taking ice from the canal waters themselves. The statutory protection in the matter of cutting ice would seem to be provided by the last sentence of the section prescribing a penalty for taking ice without permission.

In the matter of the sale of sand and gravel, I have not been able to find a statute making special provision to that end. However, section 412 G. C. reads :

“The superintendent of public works shall have the care and control of the public works of the state and shall protect, maintain and keep them in repair. The superintendent shall have the power to remove obstructions therein or thereto and shall make such alterations or changes thereof, and shall construct such feeders, dikes, reservoirs, dams, locks or other works, devices or improvements as he may deem proper in the discharge of his duties. Subject to the approval of the governor, the superintendent of public works may purchase on behalf of the state such real or personal property, rights or privileges as it may be necessary, in his judgment, to acquire in the maintenance of the public works or their improvement subject to the approval of the governor.”

Since the removal of sand and gravel from the bed of the canal and from canal lands will inure to the benefit of the canals, the statute just quoted contains ample authority for a contract of sale, when we keep in mind that such contract will result in an income to the state instead of an expense. However, such authority certainly does not go to the extent of permitting the granting of an exclusive right for a period of fifteen years.

Upon the whole then, it occurs to me that in lieu of the plan embodied in the instrument submitted, your department might enter into a contract granting the privilege for one year for the taking of ice, sand and gravel, with the provision that the privilege might be renewed from year to year, at the option of the state. If a contract upon these lines is submitted, I shall gladly give it consideration.

I am returning without my approval the instrument in triplicate as submitted.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3011.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
CRAWFORD AND PUTNAM COUNTIES.

COLUMBUS, OHIO, April 21, 1922.

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

GENTLEMEN:—I am in receipt of your letter of April 20, 1922, enclosing for my approval final resolutions on the following improvements:

Columbus-Sandusky road, I. C. H. No. 4, sections L, Chatfield and M,
Crawford county.