

2724.

APPROVAL—BONDS, CITY OF MASSILLON, STARK COUNTY, OHIO, \$5,000.00, ALL OF ISSUE DATED JULY 1, 1938, CITY HALL BUILDING BONDS.

COLUMBUS, OHIO, July 19, 1938.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of City of Massillon, Stark County,  
Ohio, \$5,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of city hall building bonds dated July 1, 1938, bearing interest at the rate of  $3\frac{1}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2725.

DISAPPROVAL—LEASE, STATE OF OHIO, THROUGH CONSERVATION COMMISSIONER, WITH ANDOVER PARK BOARD, DESCRIBED REAL ESTATE, ANDOVER TOWNSHIP, ASHTABULA COUNTY, OHIO, FOR PARK PURPOSES.

COLUMBUS, OHIO, July 20, 1938.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You recently submitted for my examination and approval a lease executed by the State of Ohio, through you as Conservation Commissioner, by which there was leased and demised to the Andover Park Board of Andover, Ohio, certain described real

estate under the jurisdiction of the Conservation Council of the Division of Conservation of the Department of Agriculture, situated in Andover Township, Ashtabula County, Ohio.

Upon examination of this lease instrument, I find that the land therein described is now under the jurisdiction of the Conservation Council under the general authority conferred upon this body by Section 472 of the General Code, as this section was amended in the Conservation Act, 113 O. L. 551, 553. That the power to lease such lands is that conferred by Section 472-1 of the General Code.

I can find no legal objection to the leasing, by the State of Ohio, through you as Conservation Commissioner, of the land described in the lease here under consideration, but upon an examination of the statutes relating to the establishment of The Andover Park Board, I find no power or authority has been conferred upon the Board of Park Commissioners of the Andover Township Park District to accept a lease of this kind.

With respect to the acquisition of lands by the Board of Park Commissioners of the Andover Township Park District for park purposes, Section 3420 of the General Code provides:

“When the vote is in favor of establishing a free public park, the park commissioners shall constitute a board, to be called the board of park commissioners of that township park district, and they shall be a body politic and corporate; their office shall not be a township office within the meaning of that term in Section 3512 of the General Code. The park commissioners shall serve without compensation. They may locate, establish, improve and maintain a free public park within and without such township, and accept a conveyance or purchase or appropriate suitable lands and materials for that purpose, within and without the township. They shall have careful surveys and plats made of the lands acquired for such purposes, and establish permanent monuments on their boundaries. Such plats, when executed according to the law providing for the execution of plats by corporations, shall be admitted to and recorded in the office of the county recorder, and such records shall be admissible in evidence for the purpose of locating and ascertaining the true boundaries of the park.”

Section 3422 of the General Code provides as follows:

“When the commissioners can not procure lands or materials desired for park purposes by deed or gift, or purchase

upon terms they regard reasonable, they may appropriate them for that purpose by proceedings in accordance with the provisions of law regulating the appropriation of private property by municipal corporations. If it is desired at any time to acquire additional grounds for enlarging such park and improving it, they may accept a deed of gift, purchase or appropriate lands therefor, in the manner provided for the original establishment of such park, and improve them. When gravel or other material is desired for the construction, improvement or repair of the roadway or other improvement herein authorized, they may appropriate and take it, and for this purpose they may go outside of the township limits."

By Sections 3422-1 and 3422-2 of the General Code, provision is made for the sale by the Board of Park Commissioners of a park district, with the approval of the electors of the township in the manner therein provided, of lands acquired, owned and held by the Board of Park Commissioners for park purposes and by Sections 3423, 3424 and 3425 of the General Code, provision is made for the levy and collection of taxes on all real estate and personal property within the limits of the township and park district "to defray the expenses of purchasing, appropriating and improving lands for park purposes and maintaining them as a free public park."

It will be noted that by the provisions of Section 3420, supra, power is conferred upon the commissioners of a park district to "accept a conveyance or purchase or appropriate suitable lands and materials for that purpose, within and without the township." The use of the term "accept a conveyance" suggests the question as to whether a legislative intent is manifested to give such park commissioners the right to acquire lands by lease for park purposes. This question has been answered by Opinion No. 6294 of the Attorney General, rendered November 9, 1936. In this opinion it was held as is disclosed by the syllabus:

"The park commissioners of a township park district established under the provisions of Sections 3415, et seq., General Code, are not authorized to acquire lands by lease for use as a public park or part thereof under the general authority conferred upon them by Section 3420, General Code, to locate, establish, improve and maintain a free public park within and without the township, and accept a conveyance or purchase or to appropriate suitable lands for that purpose."

I am in accord with the reasoning and conclusion reached in the foregoing opinion and same is, therefore, approved and followed.

Since no authority exists at law whereby the Board of Park Commissioners of the Andover Park District is authorized to accept the lease here under consideration, I am, therefore, compelled to return the same without my approval.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2726.

APPROVAL—RESERVOIR LAND LEASE, STATE OF OHIO THROUGH CONSERVATION COMMISSIONER WITH MARY ELSIE HAINEY, TERM FIFTEEN YEARS, ANNUAL RENTAL \$18.00, DESCRIBED PORTION LAKE ST. MARYS OR GRAND LAKE, AUGLAIZE COUNTY, OHIO, RIGHT TO OCCUPY AND USE FOR COTTAGE SITE PURPOSES.

COLUMBUS, OHIO, July 20, 1938.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain reservoir land lease in triplicate, executed by the State of Ohio through you as Conservation Commissioner to Mary Elsie Hailey of St. Marys, Ohio.

By this lease, which is one for a term of fifteen years and which provides for an annual rental of \$18.00, there is leased and demised to the lessee above named, the right to occupy and use for cottage site purposes only, that portion of the outer slope of the easterly embankment of Lake St. Marys or Grand Lake, that is included in the north-half of Lot No. 12 of embankments lots south of The Lake Erie and Western Railway right-of-way, and being part of the northwest quarter of section 9, town 6 south of range 4 east, Auglaize County, Ohio—excepting therefrom twenty-five (25) feet off the east side of the state property for driveway purposes.

Upon examination of this lease, I find that the same has been properly executed by you as Conservation Commissioner and by said lessee. I further find, upon consideration of the provisions of this lease and of the conditions and restrictions therein contained, that