

necessity does exist, however, it would seem that it should be the mandatory duty of the court to fix the exact date. In other words, the public interest requires that this step be taken. This is so for the reason that the question must of necessity be passed upon at some time. If it is not fixed at this hearing, then the court must meet it subsequently when the question arises in connection with the approval of the distribution made by the executor or administrator.

In view of what has been said, I am of the opinion that when property rights will depend upon an accurate determination of the date when the presumption of death arose, it is the mandatory duty of the Probate Court, under Section 10636-4, General Code, to fix such date.

You further inquire what should guide the Probate Court in fixing this date. As I have before indicated, the Ohio rule is that the presumption does not arise until seven years from the date of disappearance. It would extend this opinion too long to discuss all the possible circumstances which might have effect in reaching the determination of when the seven year period started to run. Each case must be controlled by its own facts. It is my suggestion that you examine the discussion of this subject contained in 17 Corpus Juris, commencing on page 1167 and continuing to page 1179. This discussion, together with the cases cited in the notes, should be helpful in the consideration of any question which you have before you.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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2126.

APPROVAL, TWO LEASES IN TRIPPLICATE BETWEEN SUPERINTENDENT OF PUBLIC WORKS AND PENNSYLVANIA RAILROAD COMPANY TO CANAL LANDS IN CITY OF MASSILLON, STARK COUNTY, OHIO.

COLUMBUS, OHIO, July 22, 1930.

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

DEAR SIR:—You have submitted for my examination and approval two certain leases in triplicate executed by you as Superintendent of Public Works and as Director of said department, by which there are leased and demised to the Pennsylvania Railroad Company, lessee of the Pittsburgh, Fort Wayne and Chicago Railway Company, two parcels of abandoned Ohio Canal lands in the city of Massillon, Stark County, Ohio, which parcels of land contain 8925 square feet and 10,876 square feet, respectfully, and are each described by metes and bounds in said respective leases.

The leases here in question, which are each for a term of 99 years renewable forever, subject to revaluation at the end of each 15 year period, and call for an annual rental during the first 15 year period of 6% upon the present appraised value of said parcels of land, have been executed by you under the authority of Section 9 and 18 of an act of the 88th General Assembly passed April 6, 1929, and which became effective upon the 25th day of July, 1929. 113 O. L. 532.

Although the leases here in question do not contain any recitals to this effect, I am informed by your office that each of these leases have been executed by you by way

of substitution for existing leases now held by the Pennsylvania Railroad Company as to each of the parcels of land covered by the leases now presented for my approval; and that acting under the authority of Section 9 of said act said railroad company has surrendered the leases now held by it for the purpose of securing the leases here under consideration as provided for in Section 9 of said act.

Upon consideration of the provisions of said leases supplemented by information from your office touching the right of the Pennsylvania Railroad Company to these leases upon surrender of those now held by it, I am of the opinion that said leases and provisions thereof conform to the provisions of said act of the Legislature above noted, and said leases and each of them are accordingly hereby approved as to legality and form, as is evidenced by my approval endorsed upon said leases and upon the duplicate and triplicate copies thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2127.

TOWNSHIP TRUSTEES—POWER TO ACCEPT DONATION OF LAND  
FOR RIGHT OF WAY IN CONNECTION WITH IMPROVEMENT TO  
AVOID A GRADE CROSSING.

*SYLLABUS:*

*A board of township trustees has the power to accept the donation of right of way for a township road rendered necessary by the change of direction of such road in connection with proceedings for its improvement.*

COLUMBUS, OHIO, July 22, 1930.

HON. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication as follows:

“There is located in Tully Township of this county a road known and designated as No. 199-B, extending in a northerly and southerly direction, crossing a railroad. Immediately south of the railroad right of way this road connects with another road designated as No. 197, Sections C and D, extending in a northwesterly and southeasterly direction. Both of these roads are to be improved as a single improvement by the trustees by resolution. Both branches of the improvement cross the railroad within about thirty-five rods of each other and meet immediately south thereof.

A farmer owning property north of the railroad right of way is willing to donate a strip of land thirty feet wide, connecting the two branches of the improvement north of the railroad and thus do away with one of these grade crossings. The land to be donated will cost the trustees nothing and the change is one which does not affect the route and termini of the improvement at all. It is in reality a safety measure and is being proposed by the board of trustees under Section 3298-1 which holds in part that the township trustees shall have right to widen, straighten or change the direction of any part of a