

2668.

APPROVAL, NOTES OF SUGARCREEK-SHANESVILLE VILLAGE
SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO—\$85,000.00.

COLUMBUS, OHIO, December 12, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2669.

APPROVAL, BONDS OF CITY OF CAMPBELL, MAHONING COUNTY,
OHIO—\$12,200.00.

COLUMBUS, OHIO, December 12, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

2670.

LEASING WATER—SUPERINTENDENT OF PUBLIC WORKS AUTHOR-
IZED TO LEASE SURPLUS WATER—FIXING RENTAL—HAS IM-
PLIED POWER TO PURCHASE METER FOR MEASURING WATER.

SYLLABUS:

Under the power and authority conferred by law upon the Superintendent of Public Works to lease surplus water out of the state canals and other public works for use for hydraulic and other industrial purposes, and, subject to the approval of the Governor and the Attorney General, to fix the rental to be paid by the lessee for the use of such water, the Superintendent of Public Works has the implied power to acquire and install a meter in the pipe through which such water is taken, for the purpose of registering the quantity of water used by such lessee, where the use of such meter is found to be necessary for the purpose.

COLUMBUS, OHIO, December 12, 1930.

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

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“This Department has had up for consideration the granting of a new lease for water to the Colonial Salt Company, of Akron, Ohio, which company has been taking water through a 24” pipe for the past thirty years, for which it has been paying the sum of \$2800.00 per year for the last five years.

The company contends that it only uses a small portion of the capacity of this pipe and states that its only object in leasing the water taken through such

a large pipe is to provide in an emergency, an ample supply of water for fire protection purposes.

Said company now seeks to have the rental reduced to about one-half the present rental, but since we have no way of checking the quantity of water to be drawn through this pipe, we believe that it would be good business on the part of the state to install a meter that will register both the momentary flow and the total flow of water taken through this pipe.

We find that such a meter can be purchased for about \$550.00, and since the appropriation to this department is made in a lump sum, I desire to request an opinion as to whether or not funds may be taken from this general appropriation, with which to purchase an Orifice Flow Meter to be electrically operated.

We believe that this will be a good investment and will be a check against the loss of water that percolates through openings in the joints of the vitrified pipe through which the water is taken.

The surface of the soil in the vicinity of the Colonial Salt Company is underlaid with a stratum of quick-sand, which rapidly carries off the ground water as it flows down through the top soil. We believe that the only method of determining accurately the quantity of water withdrawn from the canal is to install a meter through which all water will be taken.

If in your opinion the funds thus appropriated can be legally used for the purchase of a meter, kindly advise us and we will make a requisition through the State Purchasing Agent to purchase one of these meters.

The last lease granted to this company has already expired and we are anxious to renew the same, but wish to have the water taken through an accurate flow meter."

In your communication above noted my opinion is asked with respect to your authority as Superintendent of the Public Works of the state to purchase and install an orifice flow meter in the pipe through which water is to be taken by the Colonial Salt Company from the summit level of the Ohio Canal at Akron, Ohio, under a lease which you propose to execute to said company by the terms of which there is to be leased and granted to said company the right to take and use surplus waters from said canal for a term of years as provided for in such lease. In this connection I am advised that said meter is to be installed in a twelve foot section of iron pipe which is the property of the state and which is imbedded in the bank of the canal, at the outer edge of which bank said iron pipe owned by the state connects with another pipe or conduit owned by said company by which the water is carried into its plant for use in the manufacture of its product.

In the consideration of the question presented in your communication it is to be observed that the Superintendent of Public Works has only such power and authority with respect to the public works of the state as are expressly granted to him by statutory provision, and such as are necessarily implied for the purpose of carrying out the express power and authority granted to him with respect to such public works. *State ex rel vs. Railroad Company*, 37 O. S. 157, 174. With respect to your question, however, it is to be noted that by the provisions of Sections 433 and 14009, General Code, express authority is granted to the Superintendent of Public Works to sell or lease the right to use surplus water in the state canals or other public works of the state for hydraulic or other purposes for a term not exceeding twenty-five years for a stipulated annual rental, or otherwise, as the Superintendent of Public Works may deem most beneficial for the interests of the state, subject to such conditions, reservations and restrictions as he may deem necessary and proper.

In consideration of the question here presented it is likewise pertinent to note the provision of Section 412, General Code. This section provides as follows:

"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, docks 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."

Inasmuch as, under the statutory provisions above noted, you, in your official capacity as Superintendent of Public Works of the state, have authority to lease surplus water out of said canal for hydraulic and other industrial use, and, subject to the approval of the Governor and the Attorney General, to fix the rental to be paid by the lessee for the use of such water, I am of the opinion that you have the implied power and authority to acquire and install a meter in the pipe through which such water is taken, for the purpose of registering the quantity of water used by such lessee, if you find that the use of such meter is necessary for the purpose; and that this is true whether the rental provided for in the lease is a flat rate per year or is determined by the amount of water used.

The question presented in your communication is therefore answered in the affirmative.

Since submitting the communication above quoted, you have advised me that there are available moneys appropriated for the use of your department which can be expended for the purchase and installation of said water meter, and that you did not in and by said communication intend to present any question touching the availability of moneys appropriated for your department for such expenditure; and no opinion is expressed by me upon this question.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2671.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE ALLIANCE LIFE AND ACCIDENT INSURANCE COMPANY, ALLIANCE, OHIO.

COLUMBUS, OHIO, December 13, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge the receipt of your communication together with the proposed Articles of Incorporation of the Alliance Life and Accident Insurance Company, of Alliance, Ohio, for my approval.

The proposed Articles of Incorporation disclose the intention of the incorporators to form a company for the purpose of making insurance upon the lives of individuals, disability of the same resulting from sickness or accident, and the granting, purchas-