

497.

LEASE—CANAL LAND, STATE TO COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY, DESIGNATED PORTION, OHIO CANAL, HAMILTON TOWNSHIP, VILLAGE OF LOCKBOURNE; FRANKLIN COUNTY.

COLUMBUS, OHIO, April 29, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication with which you submit for my examination and approval a canal land lease in triplicate executed by and between the State of Ohio, acting through you as Superintendent of Public Works and as Director of such department, to the Columbus and Southern Ohio Electric Company of Columbus, Ohio.

By this lease, which is one for a stated term of ninety-nine years, renewable forever, and which provides for the payment of an annual rental of \$316.00 during the first fifteen-year period of the term of the lease, with a provision therein for reappraisal at the end of each fifteen-year period of the term of the lease for the purpose of determining the subsequent rentals to be paid by said lessee, there is granted to said lessee above named the right to occupy and use for the purpose of constructing, reconstructing, maintaining and operating, overhead and underground, electrical transmission and distribution lines and facilities, steam and electric railway lines and other transportation facilities, telephone and telegraph lines and facilities, gas and water lines and facilities and other public service facilities, including all plants, buildings, structures, stations, substations, tracks, trackage, poles, wires, piers, abutments, spans, cables, conduits, mains, pipes, tubes, drains, transformers, insulators and other equipment property and appliances incident or necessary to the foregoing, on, over, under and along the following described state property to-wit:

Situated in Village of Lockbourne and in the township of Hamilton, Franklin County and township of Harrison, Pickaway County, Ohio, and beginning at a line drawn parallel to and fifty (50') feet westerly from the east bound main track of the Norfolk and Western Railway Company, said point being opposite Station 2434+42.63 and extending thence southwesterly over and along said canal property, eight thousand, three hundred fifty-seven and thirty-seven hundredths (8,357.37') feet to a point at Station 2518+00, including the full width of the bed, embankments thereof, wide waters and basins, as the same is shown of record on the plats recording The Jennings-Lawrence Company

Survey of 1927-1928, which was made under the direction of the Superintendent of Public Works of the State of Ohio, and approved by said Superintendent April 6th, 1928, being the same lands surveyed by Alfred Albright in 1913, excepting and reserving therefrom the following:

(a) the interest of The Scioto Valley Traction Company under that certain canal land lease with the State of Ohio for a railway crossing seventy-five (75') feet in width at canal survey station 2435+48.21, dated December 21, 1931;

(b) that certain forty-seven hundredths (0.47) acre tract of land located at canal survey station 2436+21.34 which was conveyed by the State of Ohio to The Chesapeake and Hocking Railway Company in fee simple by deed dated September 19, 1927 and recorded in Deed Book 865 at page 562, Recorder's Office, Franklin County, Ohio;

(c) the right of the Village of Lockbourne to maintain Commerce Street, a sixty-six (66') foot street at canal survey station 2434+98.02, insofar as the same crosses or encroaches upon said canal lands; and

(d) the right of the Commissioners of Franklin County to maintain Wm. Rowe Road, a road sixty-five (65') feet in width, at canal survey station 2458+31.71, insofar as the same crosses or encroaches upon said canal lands.

This, when the same is fully executed by the approval of the Governor and the Attorney General, is to supersede a lease of the Ohio Canal lands above described executed by the State of Ohio, acting by and through the then Superintendent of Public Works, to The Columbus Railway, Power and Light Company under date of November 16, 1923. This lease so executed to The Columbus Railway, Power and Light Company is one for a term of twenty-five years; and the same was executed, I assume, under the authority of the act of the 79th General Assembly enacted under date of June 7, 1911, 102 O. L., 293, 294. In the proposald lease hereunder consideration, it is recited that the name, The Columbus Railway, Power and Light Company, is the former name of the Columbus and Southern Ohio Electric Company, the lessee named in this lease instrument; and I assume that the Columbus and Southern Ohio Electric Company now owns and holds all of the right, title and interest in said present existing lease which was formerly owned and held by said company under the name of The Columbus Railway, Power and Light Company.

In this situation, no objection is seen to the execution of a new lease by and between the state represented by you as Superintendent of Public Works and the lessee above named, superseding existing lease between the parties, provided there is no diminution in the amount of rental now being paid to the State under the present existing lease between the par-

ties. As to this, I am advised that the annual rental of \$316.00 to be paid by the lessee during the first fifteen-year period of the lease here under consideration is the identical amount of the annual rental payable under the existing lease.

The lease which you have submitted for my consideration and approval is one executed by you under the authority of Section 1 of the Farnsworth Act, so-called, enacted by the 89th General Assembly under date of April 22, 1931, 114 O. L., 518, which section of said Act has been carried into the General Code as Section 464-1. This section of said Act provides as follows:

“That whenever any village, city, township, county or other taxing district desires to take over any abandoned canal lands for public park or recreational purposes, it may make application in writing by its proper officers, within two years from the date this act becomes effective, to the department or agency of government in control of such abandoned canal lands, stating the purposes for which it is desirous of obtaining possession of such land. The department or agency of government in control of such lands, if it determines that it is in the interest of the state and of the public so to do, may negotiate with such village, city, township, county or other taxing district in respect to the granting of a lease of such land for which application has been made. In determining the annual rental to be paid for a lease of abandoned canal lands, the superintendent of public Works shall take into consideration the public use which is to be made of such canal property and fix the annual rental therefor at a nominal sum, but such city, village, township, county or other taxing district of the state shall obligate itself by the terms of the lease granted it, to make substantial improvements thereon to the satisfaction of the superintendent of public works so as to fit the same for public park and recreational purposes, and this shall be a necessary restriction in the granting of such leases. Provided, however, that nothing in this act contained shall apply to canal lands, land and bodies of water now used or hereafter to be used for power, water supply or other industrial purposes.

Tracts of such abandoned canal property not disposed of in the manner herein provided may be leased by the superintendent of public works to responsible parties under the provisions of section 13965 of the General Code, except the length of the term of such leases may be for ninety-nine years, renewable forever, or for a term of fifteen years, and multiples thereof up to ninety years, and that railroad rights-of-way need not be limited to lengths of two miles; leases granted for a longer term than fifteen years shall contain a clause providing for a re-appraise-

ment of the canal lands described in such leases, by proper state authority, at the end of each 15-year period, embraced in such leases and the annual rental therefor shall be six per cent of the appraised value thereof for each period."

Under the provisions of this section, all abandoned canal property that has not been disposed of by lease for public park and recreational purposes as provided for in the first paragraph of this section may be leased by the Superintendent of Public Works to responsible parties under the provisions of section 13965 of the General Code, except that the length of the term of such leases may be for ninety-nine years, renewable forever, or for a term of fifteen years, and multiples thereof up to ninety years; and provided further that leases granted for a longer term than fifteen years shall contain a clause providing for a reappraisal of the canal lands described in such lease, by proper state authority, at the end of each fifteen-year period, embraced in such leases, and the annual rental therefor shall be six per cent of the appraised value thereof for each period.

Whatever question may be suggested as to the power and authority of the Superintendent of Public Works acting under the authority of section 13965, General Code, referred to in section 464-1, General Code, above quoted, to lease canal lands other than the berme banks thereof, a consideration of the provisions of sections 464-1, General Code, leads to the view that as to abandoned canal lands such as under the provisions of this section may be leased to municipal corporations and to other political subdivisions or taxing districts for public park or recreational purposes, this section authorizes the Superintendent of Public Works to lease the whole of such abandoned canal lands including the bed and banks thereof. In this view, effect can be given to the provision of section 464-1, General Code, referring to section 13965, General Code, by requiring that leases executed under the authority of the later section shall only be made after the Superintendent of Public Works as the successor to the power and authority of the State Canal Commission and of the Board of Public Works (sec. 464, G. C.) has found that the canal lands to be leased are the property of the State of Ohio and that the use of said canal lands under the lease and for the purposes therein stated, will not materially injure or interfere with the maintenance or navigation of any of the canals of the State, and by requiring the Superintendent of Public Works to value the canal lands covered by the lease for the purpose of determining the rental to be paid thereon, all as provided for by sections 13965, et seq., General Code.

In this view, I am of the opinion that you are authorized to execute the lease here under consideration and inasmuch as the lease has been properly executed by you as Superintendent of Public Works, acting for and on behalf of the State of Ohio, and by the Columbus and Southern

Ohio Electric Company, the lessee therein named, acting by the hand of its President pursuant to the authority of a resolution duly adopted by the Board of Directors of said company, and since the provisions of this lease and the conditions and restrictions therein contained are in conformity with the above noted statutory provisions and with other statutory enactments relating to leases of this kind, I am approving the same as is evidenced by my approval endorsed upon the lease instrument and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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498.

BONDS—CUYAHOGA COUNTY, \$233,000.00.

COLUMBUS, OHIO, April 29, 1939.

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

GENTLEMEN :

RE: Bonds of Cuyahoga County, Ohio, \$233,000.00.

The above purchase of bonds appears to be part of a \$1,625,000 issue of jail and court house building bonds of the above county dated May 1, 1930. The transcript relative to this issue was approved by this office in an opinion rendered to the State Teachers Retirement Board under date of October 26, 1933, being Opinion No. 1781.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said county.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*