

3482.

APPROVAL, CANAL LAND LEASE, STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, TO JESSE J. GILBERT, FARMERSVILLE, OHIO, DESIGNATED ABANDONED MIAMI AND ERIE CANAL LANDS, LOCKLAND, HAMILTON COUNTY, OHIO, RIGHT TO OCCUPY AND USE FOR BUSINESS PURPOSES, ANNUAL RENTAL, \$60.00.

COLUMBUS, OHIO, January 3, 1939.

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

DEAR SIR: You have submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said department to one Jesse J. Gilbert of Farmersville, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$60.00, payable in semi-annual installments of \$30.00 each, there is leased and demised to the lessee above named the right to occupy and use for business purposes a parcel of abandoned Miami and Erie Canal lands situated in the city of Lockland, Hamilton County, Ohio, and which is more particularly described as follows:

Being a strip of land seventy (70') feet, more or less in width, and commencing at the northerly line of Lock Street in said city and extending thence in a northeasterly direction with the lines of said canal property, a distance of one hundred and twenty-five (125') feet, and containing eight thousand seven hundred fifty (8,750) square feet, more or less.

The parcel of canal land above described is a part of that section of the Miami and Erie Canal which was abandoned for canal and hydraulic purposes by an act of the 87th General Assembly under date of April 21, 1927, 112 O. L., 388, which act transferred the jurisdiction and control of the canal lands thereby abandoned to the Director of Highways for highway and other purposes. Under an act passed by the 91st General Assembly under date of May 6, 1935, 116 O. L., 155, 158, provision is made for the transfer back to the Superintendent of Public Works of such of these Miami and Erie Canal lands as are not designated by the Director of Highways as lands to be used for highway purposes.

Accompanying this lease instrument and attached is a copy of a finding made by the Director of Highways and entered upon the journal of his office wherein it is stated that the above described parcel of Miami and Erie Canal lands is not needed in any scheme of highway development as contemplated under section 14153-6 and its related sections as amended in 116 O. L., 155; and that pursuant to the authority of said sections of the General Code as amended in the act last above referred to, this parcel of land is released by the Director of Highways to the Superintendent of Public Works for such disposition as such last named officer may make of the property pursuant to law.

Section 14153-8, General Code, as amended in 116 O. L., 158, provides:

“All other lands which may be shown on said plat adjacent to said highway and which will not be used for highway purposes may be leased under the direction of the superintendent of public works in the following manner:

The said superintendent of public works shall appraise said lands, not to be used for said highway, just prior to the granting of a lease therefor, at their true value in money and the annual rental thereon shall be six per cent (6%) of such appraised value.

After said lands are so appraised after application therefor, the lands not needed or required within said highway may be leased to any reasonable applicant, for a period of fifteen (15) years and multiples thereof up to ninety (90) years, or for a term of ninety-nine (99) years, renewable forever, upon a rental equal to six per cent (6%) per annum upon the value of the appraisement so made, and at the end of each fifteen (15) year period, said lands shall be reappraised and likewise leased to the owner or owners of such leaseholds, or other applicants therefor.”

This lease is one executed under the provisions of this section of the General Code. And finding, as I do, that this lease has been properly executed by you as Superintendent of Public Works, acting for and in the name of the State of Ohio, and by said Jesse J. Gilbert, as the lessee therein named, and that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the act of the legislature under the authority of which the same is executed, and with other statutory enactments relating to leases of this kind, I am approving this lease as is evidenced by my approval endorsed thereon and upon the

duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

3483.

DOG AND KENNEL FUND—BOARD OF COUNTY COMMISSIONERS—UNDER SECTION 5652-7a, G. C. WHERE INSUFFICIENT MONEY TO PAY EXPENSES AND CLAIMS—MANDATORY DUTY TO FIX LICENSE FEES—ALLOCATION—CONCLUSIVE.

SYLLABUS:

If in any year there is not sufficient money in the dog and kennel fund of a county, after paying the expenses of administration, to pay the claims allowed during such year for livestock injured or destroyed by dogs, and the board of county commissioners of the county acting under the authority of Section 5652-7a, General Code, finds such fact by entry on its journal, a mandatory duty is imposed upon such board of county commissioners to fix the dog and kennel license fees for dogs kept and harbored in the county for the ensuing year at such amount that when the same are multiplied by the number of licenses issued during the previous year the product will equal the aggregate of the claims for injured and destroyed livestock allowed by said board of county commissioners, plus the balance of said allowed claims for the previous year remaining unpaid, plus the expense of administration; provided that the increase in said license fees shall always be in the ratio of one dollar for male or spayed female dogs, three dollars for unspayed female dogs and ten dollars for dog kennel licenses. And such action, when the same has been taken by the board of county commissioners in pursuance to the provisions of this section of the General Code, is conclusive.

COLUMBUS, OHIO, January 3, 1939.

HON. FREDERICK L. ORUM, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you advise me that the board of county commissioners by a resolution duly entered upon its journal under date of December 5, 1938, made an order increasing the registration fees to be paid with respect to dogs kept and harbored in said county from the prior fee rate