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FORM OF LEASE FOR ARMORY AT CLEVELAND, CONSIDERED.

COLUMBUS, OHIO, June 28, 1929.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You submit a copy of a proposed lease to be executed by the Board of County Commissioners of Cuyahoga County and which grants unto you, as lessee, certain premises in the city of Cleveland, for the use and benefit of the Ohio National Guard for the full term of two years from the first day of July, 1929. The form of said lease is drawn in an attempt to comply with the provisions of House Bill No. 233, as enacted by the 88th General Assembly, which was entitled an act to provide for the leasing and ultimate purchase by the state of the central armory in the city of Cleveland. Said act provides:

“SECTION 1. That the adjutant general of Ohio, on behalf of the state, and the county commissioners of Cuyahoga County, on behalf of said county, be, and they are hereby authorized and empowered to enter into a contract for the rental and for the ultimate purchase by the state, for the use of the Ohio National Guard, of the property now owned by Cuyahoga County, located on Lakeside avenue in the city of Cleveland, and known as the central armory, subject to the terms and conditions of this act.

SECTION 2. That the price to be paid and received for said property shall be fixed by agreement of the adjutant general and the county commissioners of Cuyahoga County, and shall not exceed the sum of six hundred forty-four thousand four hundred sixty-nine dollars and fifteen cents (\$644,469.15). Such purchase price and interest accruing on unpaid installments shall be payable in installments of such amount as the general assembly may appropriate for the purpose. Any money allowed and appropriated by the general Assembly for the part payment of the purchase price of said property shall be paid by the treasurer on the warrant of the auditor directly to the commissioners of Cuyahoga County, and by them be credited to the sinking fund of the county.

SECTION 3. That such contract for the rental of said property shall be in the form of a lease for the term of two years from the first day of July, 1929, with an option to the state to renew such lease for successive terms of two years each until the whole amount of the purchase price and interest has been paid. The rate of rental for each successive term shall be four per cent of the amount of the purchase price remaining unpaid at the date of the beginning of such term. Such lease shall provide that in the event of the failure of the state at any time to exercise its option to renew, or in the event of a forfeiture of the rights of the state by reason of non-payment of rent, the whole amount previously paid upon the purchase price shall be refunded to the state.

SECTION 4. That upon the payment of the whole of the purchase price of said property, the commissioners of Cuyahoga County shall execute a warranty deed of said property to the State of Ohio, and deliver the same to the adjutant general.

SECTION 5. That for the purpose of the payment of a part of the purchase price of said property, there be, and hereby is, appropriated out of any money in the state treasury to the credit of the general revenue fund, not otherwise appropriated, the sum of two hundred fourteen thousand eight hundred, twenty-three dollars and five cents (\$214,823.05.)”

The act above quoted was filed in the office of the Secretary of State on April 25, 1929, and will not become effective until July 24, 1929. However, in the event that the lease is executed when the act becomes effective, undoubtedly, by reason of the terms of the act, the rental period would be effective as of July 1st.

Without a detailed consideration of the various provisions of the lease it is believed sufficient to state that the same mentions all of the essential requirements of the act as above set forth. It is suggested, however, that in the consideration clause the following language should be inserted preceding the word "in" in the third line thereof:

"In pursuance of the provisions of House Bill No. 233, as enacted by the 88th General Assembly and"

It is further noted that in the clause granting to the lessee the option to renew the lease for successive two year terms, until the whole amount of the purchase price of said premises shall have been paid, the following language occurs:

"Provided, however that notice of the exercise of such option shall be given by the Adjutant General of Ohio to the said lessors on or before the date of the expiration of any existing lease."

It is suggested that the language last quoted is objectionable for the reason that Section 3 of the act states that said lease shall contain an option to the State to renew such lease for successive terms of two years until the whole amount of the purchase price and interest has been paid. In other words, the condition above provided is a limitation upon the option to renew, which the language of the act does not seem to authorize. In any event, in view of the numerous duties that devolve upon the Adjutant General of Ohio, it is believed, from a practical standpoint, that the burden should not be placed upon him of giving notice as required in said proviso. It is therefore suggested by this department that such clause should be eliminated from the lease.

It will be observed that Section 5 of the act appropriates the sum of \$214,823.05 for the purpose of the payment of a part of the purchase price. The lease contains a clause to the effect that if any funds so appropriated become available and shall be paid within a reasonable time after the first day of July, 1929, the rate of rental for the original term of the lease shall be 4% of the amount of the purchase price of said property, after deducting the amount of such appropriation.

It is further noted that said lease, among other things, provides that the lessee

"agrees to pay for the use and occupation of said premises during the term of this lease and of each successive renewal hereof, an annual rental in an amount equal to four percent of the unpaid balance of the purchase price of said premises at the beginning of such term; such rent to be payable biennially from funds appropriated by the General Assembly of Ohio for such purpose."

Whereas, Section 3 of the act provides:

"The rate of rental for each successive term shall be four per cent of the amount of the purchase price remaining unpaid at the date of the beginning of such term."

In view of the fact that the act provides that the rental shall be 4% for each

successive term, the technical question could be raised that such language permits only the payment of 4% biennially or not to exceed 2% per annum. Apparently the county commissioners and your office interpret the language to mean 4% payable annually, and this may be a logical conclusion as to the legislative intent in the use of such language. However, in view of the fact that there is room for doubt as to the exact meaning of said language, it is suggested that the language of the statute should be used in the lease in reference to the payment of rentals rather than the language which is now contained in the form submitted with reference to the subject.

The copy of the proposed lease submitted by you seems to be in accord with the provisions of the act as hereinbefore set forth, except as above noted, and it is believed that if such lease is amended as herein suggested, in the event the law becomes effective, and the lease is properly executed and accepted by the Adjutant General, the same will be a binding obligation. It should be further mentioned, however, that the instrument further provides:

“Provided further that nothing herein contained shall bind the State of Ohio nor the Adjutant General of Ohio, officially or personally, for any amount of money in excess of that portion of the amount appropriated by law for such purposes, applicable to the rent of this particular property, under the laws and military regulations in force at the time of such appropriation.”

It is further suggested that the lease should not be executed until July 24, 1929, the effective date of said act.

Respectfully,
GILBERT BETTMAN,
Attorney General.

573.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN BELMONT, GEAUGA, MADISON AND MONROE COUNTIES.

COLUMBUS, OHIO, June 28, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN NOBLE COUNTY.

COLUMBUS, OHIO, June 28, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*