

of \$120,000 authorized on July 10, 1922. The proceedings leading up to the authorization and issuance of these bonds became pending in that year. Section 4679, General Code, was last amended by the Legislature May 14, 1921, as part of House Bill No. 180 of the 84th General Assembly. It provides as follows:

"The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts."

It is my view that under the provisions of Section 4679, supra, which section was in force and effect at the time the proceedings leading up to the issuance of these bonds became pending, there was no authority for the issuance of school bonds by other than a city school district, an exempted village school district, a village school district or a rural school district. Since this issue appears to have been authorized and issued by none of these districts as authorized by law, I advise against their purchase.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2660.

CANAL LAND—TERMS OF RENTAL REQUIRED BY STATE WHEN SUCH LAND IS TAKEN OVER BY A MUNICIPAL CORPORATION OR OTHER POLITICAL SUBDIVISION—DIFFERENCE IN APPRAISAL VALUES—RENTALS ON LEASES ALREADY OUTSTANDING DISCUSSED.

SYLLABUS:

Municipal corporations or other political subdivisions in Stark County, Ohio, taking over by assignment from the state existing leases on Ohio canal lands abandoned by the act passed by the 88th General Assembly under date of April 6, 1929, and which went into effect on July 25, 1929, (113 O. L., p. 532), are required in such cases to pay to the state a rental of 4% on the appraised value of the lands covered by such leases as such value is determined by the appraisal made under the provisions of said act, whether such leases are in their original form or have been renewed under the provisions of said act by the lessees therein named; and this is true notwithstanding the fact that as to such leases as have not been renewed under the provisions of said act by the lessees therein named, the municipal corporation or political subdivision to which assignments of such leases have been made is only entitled to collect from the respective lessees named in said leases an annual rental of 6% upon the appraised value of the lands covered by said leases on the appraisal made at the time of the execution of said respective leases.

COLUMBUS, OHIO, December 10, 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:

"By the terms of Section 7 of Amended Senate Bill No. 235, as passed by the 88th General Assembly of the State of Ohio on the 6th day of April, 1929 (O. L. 113, pages 532-541), the Governor was required to appoint a Board

of Appraisers consisting of three to five members, one of which shall be the Superintendent of Public Works, to appraise the abandoned Ohio canal lands within and extending from the city of Massillon, Stark County, Ohio.

Accordingly, a board, consisting of three members was appointed by the Governor to make these appraisements. The act requires that the Board of Appraisers thus appointed should proceed within thirty days after such appointment, to appraise portions of said abandoned canal lands applied for by the municipality, or other subdivision of the state, together with all feeders, basins, wide-waters and state lots heretofore used in connection with said abandoned canal property within such municipalities.

The city of Massillon having applied for a lease, under the terms of this act, the Board of Appraisers appointed by the Governor, proceeded on the 9th day of September, to organize for the transaction of business under the terms of the act.

A question has arisen as to just how these appraisements are to be made. After reciting a method of appraising the lands, the statute recites: 'and likewise all existing *leases* upon said canal and feeder lands, basins, wide-waters and state lots within the limits of the applications, as applied for by municipalities or other legal subdivisions of the state, at their true value in money,' etc.

Most of these lands in the city of Massillon are already under existing leases running for terms ranging from 12 to 14 years, and the question in the minds of the members of the appraisal board is just how these leases are to be appraised.

The control of these lands has for the time being, passed out of the hands of the state and the only thing that it can dispose of is the leasehold, for which it is entitled to collect the rentals upon the appraised value thereof, at the rate of 6% per annum.

Section 10 of the act, however, recites: 'The *lands* described in any existing lease or leases shall be appraised at their true value in money for any purpose for which the land therein described can be used in the same manner as prescribed in Section 7 hereof,' and the act provides that after such existing lease or leases including the renewals thereof, have been transferred and turned over to said applicant, the city, village or other political subdivision to which said transfer and assignment has been made, shall thereafter be entitled to all the revenues accruing from the same and from the renewals thereof, and shall pay to the State of Ohio rental on the appraised value of the canal lands herein leased at the rate of 4%.

Section 7 of the act provides for the appraisal of all existing leases upon said canal and feeder lands, etc., at their true value in money, while Section 10 indicates that the lands described in the existing leases shall be appraised at their true value in money.

To illustrate, let us suppose that an existing lease is appraised at \$1,000.00 and that the annual rental thereon is \$60.00, but when the Appraisal Board proceeds to make an appraisal, it may find that the true value of the land is \$1,500.00, the annual rental for which would be \$90.00.

The question is whether the municipality shall be required to pay an additional rental of \$30.00 to the state, say, for a period of 14 years, amounting to \$420.00, over and above the rental called for in the existing lease.

As the valuation of these leases will exceed \$200,000.00, the municipality might be required to pay an additional rental over and above that called for in the leases, so as to make the rental prohibitive. The municipal authorities contend that this is unfair to the municipality since the only thing that

the state has to turn over to the city is the right to collect the rentals thereon, two-thirds of which must be turned over to the state.

It would seem that the state would be receiving remuneration for something which it cannot turn over to the municipality until the end of the 15-year period, at which time the lands leased must be re-appraised.

We will greatly appreciate it if you will render a decision on this point at your earliest convenience, as the Appraisal Board desires to make these appraisements at an early date, but is anxious to make it upon a basis that you will hold to be legal."

The act referred to in your communication was Amended Senate Bill No. 235 which was passed by the 88th General Assembly under date of April 6, 1929, as an act to abandon, for canal purposes, that portion of the Ohio Canal and lateral canals connected therewith lying within Stark County, and to provide for the lease of the canal lands so abandoned. This act was filed in the office of the Secretary of State on April 26, 1929, and became effective as a law, on July 25, 1929.

This act provided that subject to the rights of persons then holding leases on the canal lands abandoned by said Act, municipal corporations or other political subdivisions within which such abandoned canal lands were located, have a prior right to take from the State leases on such abandoned canal lands, upon application therefor made within one year from the effective date of said Act. In this connection, Section 5 of said Act provided that any city, village or other political subdivision of the state desiring to lease any portion of said abandoned canal and feeder lands, basins, wide-waters and state lots heretofore used in connection with the canal property lying within or adjacent to or extending from the boundaries of such political subdivision, shall, within one year from the date at which this act becomes effective, file an application for a lease of the same with the Superintendent of Public Works.

As to leases then held by individuals or corporations on said canal lands within the limits of a municipal corporation or other political subdivision, it is provided that the rights of the State as the lessor in any such lease or leases should be assigned to such municipal corporation or other political subdivision, and the same provision is made with reference to renewals of the then existing leases taken by such persons under the provisions of said Act.

The questions presented in your communication require a consideration of the provisions of Sections 7, 9 and 10 of said Act. These sections read as follows:

"Section 7. As soon as convenient, after the filing of said application, the governor shall appoint a board of appraisers, consisting of either three or five members, as he may deem best, one of whom shall be the superintendent of public works, and the board of appraisers thus appointed shall proceed, within thirty days after such appointment, to appraise the portions of said abandoned canal lands applied for by municipalities or other subdivisions of the state together with all feeders, basins, wide waters and state lots heretofore used in connection with said abandoned canal property within such municipalities, and likewise all the existing leases upon said canal and feeder lands, basins, wide waters and state lots, within the limits of the applications as applied for by a municipality or other legal subdivision of the state, at their true value in money, and shall file in writing certified copies of such appraisement with the governor and superintendent of public works of Ohio, and likewise with the mayor or city manager of the municipality making such applications."

"Section 9. As soon as the appraisements of the canal lands applied for by municipalities and other legal subdivisions of the state have been completed, the superintendent of public works, subject to the approval of the

governor and attorney general, shall proceed, subject to all rights under existing leases with the right of renewal thereof under the terms of this act, to lease the canal lands herein abandoned for canal purposes, in strict conformity with the provisions of this act, but any owner of an existing leasehold for canal land may file an application within one year from the date at which this act becomes effective with the superintendent of public works for permission to surrender his present leasehold and take a new lease thereon under the terms of this act, and the annual rental thereon shall be at the rate of six per cent annually, but shall not be for a less amount than that stipulated in the original lease, and when such leasehold has been renewed, it may be assigned by the superintendent of public works to the municipality making application to lease the canal lands within its corporate limits."

"Section 10. If any portion of the said abandoned canal property covered by such application has already been leased by the superintendent of public works, or his predecessors in office, under the provisions of statutes heretofore enacted, the superintendent of public works may, subject to the approval of the governor and attorney general, transfer and assign such lease or leases, including water leases, to the city, village, or other political subdivision making such application, subject, however, to all the rights of existing lessees of the State of Ohio, for lands only. The lands described in any existing lease or leases shall be appraised at their true value in money for any purpose for which the land herein described can be used, in the same manner as prescribed in section seven hereof. After such existing lease or leases including renewals thereof, have been transferred and assigned to said applicant, the city, village or other political subdivision to which such transfer and assignment has been made, shall thereafter be entitled to all the revenues accruing from the same, and from the renewals thereof, and shall pay to the State of Ohio rentals on the appraised value of the canal lands herein leased at the rate of 4% as hereinafter provided in Section 11, except that a municipality or other legal subdivision of the state holding a lease under the terms of this act, shall pay to the State of Ohio, two-thirds of all receipts from lease or sale of water taken from said Ohio canal which leases shall be made by the said superintendent of public works, or when made by a municipality, the rate of rental shall be approved by the said superintendent, before the same becomes effective.

Such land leases as may be granted to municipalities or other legal subdivisions of the state by the superintendent of public works pursuant to the provisions of this act, may run for a period of 99 years, renewable forever, or for a term of not less than 15 years, or for any multiple of 15 years up to and including 90 years, but leases for water shall not be made for a longer term than five years."

Section 11 of said act, which is referred to in Section 10, above quoted, provides that land leases granted to a municipality under this act, shall provide for an annual rental at the rate of 4% per annum, as fixed by a board of appraisers as herein provided, one-half of the annual rental to be paid semi-annually, in advance, on the first day of November in each and every year.

It is apparent, from the statutory provisions above noted, that municipal corporations or other political subdivisions in which are canal lands abandoned by said act have certain lease rights with respect to such canal lands as were at the time of the effective date of said act covered by existing leases to other persons or corporations and to such canal lands as were not then covered by existing leases. As to canal lands not covered by any existing lease or leases, it is clear that the municipality or other political subdivision in taking a lease for the same, is required to pay to

the State of Ohio therefor, an annual rental of 4% on the appraised value of the land leased, as such value is fixed by the appraisement made under the provisions of said act.

However, no question is made in your communication with respect to leases of this kind. Your question has reference to cases where such abandoned canal lands are already covered by existing leases made to persons or corporations other than such municipal corporations or other political subdivisions. Under the provisions of the act of the General Assembly above quoted, the municipal corporation or other political subdivision has a right to take over such leases by assignment to be executed by the Superintendent of Public Works on behalf of the State of Ohio, and this is true whether such leases are in their original form or have been renewed by the lessees therein named under the provisions of said act. The provisions of said act which had immediate application to the question presented in your communication are those contained in Section 10 of said act above quoted, and which are as follows:

“ * * * After such existing lease or leases including renewals thereof, have been transferred and assigned to said applicant, the city, village or other political subdivision to which such transfer and assignment has been made, shall thereafter be entitled to all the revenues accruing from the same, and from the renewals thereof, and shall pay to the state of Ohio rentals on the appraised value of the canal lands herein leased at the rate of 4% as hereinafter provided in Section 11 * * * ”

From the provisions just quoted, read in connection with other provisions of said act, it is seen that where an existing lease on such abandoned canal lands is renewed by the lessee under the provisions of said act, and the rights of the State in such lease are taken over by the municipal corporation or other political subdivision by assignment, the lessee in such new lease is required to pay to the municipal corporation or other political subdivision taking over said lease, an annual rental of 6% upon the appraised value of the canal lands covered by said leases under the new appraisement made in the manner provided by said act, and such municipal corporation or other political subdivision is, in turn, required to pay to the State of Ohio, an annual rental of 4% upon such new appraised value.

The provisions of Section 10 of said act, last above quoted, considered in connection with those of Section 11 of said act therein referred to, likewise govern the situation with respect to the question presented in your communication in cases where existing leases to persons and corporations other than municipal corporations and other political subdivisions are taken over by such municipal corporation or other political subdivision by assignment without such lease or leases having been renewed by the lessee or lessees therein named, under the provisions of said act. In such case the lessee or lessees named in such lease or leases are required to pay to the municipal corporation or other subdivision taking over such lease or leases, an annual rental of 6% upon the appraised value of the canal lands covered by such lease or leases, as determined by the appraisement made at the time such lease or leases were executed. Inasmuch, however, as the provisions of Section 10 of said act last above quoted are that in such case the municipal corporation or other political subdivision to which such transfer and assignment has been made, shall pay to the State of Ohio rentals on the appraised value of the canal lands at the rate of 4% “as hereinafter provided” in Section 11, and since Section 11 of said act provides for the payment of an annual rental at the rate of 4% per annum “upon the appraisement as fixed by the board of appraisers as herein provided” it follows that in such case the municipal corporation or other political subdivision taking over the rights of the State in such prior existing lease, is required to pay to the State of

Ohio an annual rental of 4% of the appraised value of the canal lands covered by such lease according to the value fixed by the new appraisalment of such lands made under the provisions of said act.

In this connection it is to be observed that the language of Section 10 of said act, providing that land described in any existing lease or leases shall be appraised at their true value in money for any purpose for which the land therein described can be used, "in the same manner as prescribed in section seven hereof," is some indication that the Legislature in providing for the appraisalment of existing leases in Sections 7 and 10 of said act did not thereby express any intention other than that canal lands covered by existing leases should be appraised as other canal lands abandoned by said act. This was apparently the view of my predecessor in the consideration of the identical provisions of Sections 7 and 10 of the act of March 25, 1925 (111 O. L. 208), providing for the abandonment of that portion of the Miami and Erie canal between the Maumee river at Defiance, Ohio, and a point 500 feet north of the Middletown dam near the north corporation line of the city of Middletown. The opinion of my predecessor, above referred to, is found in the Opinions of the Attorney General for the year 1927, Vol. III, at page 1670. In the opinion of my predecessor, here referred to, it was held :

"1. It is the duty of the appraisers provided for in House Bill No. 162, passed by the 86th General Assembly (111 Ohio Laws, page 208), to appraise existing leaseholds at their true value in money for any purpose for which the land can be used, as provided in sections seven and ten of said act.

2. Any leases given upon said property after said appraisalment should be based upon the value so fixed."

In the former opinion, here referred to, it is said :

"It seems that the intent of the legislature as expressed in Sections 7 and 10 of the act under consideration was, that when a portion of the canal property was encumbered by an existing lease, such property should be appraised at its 'true value in money for any purpose for which the land therein described' could be used; and such value must be taken as the basis of all subsequent leases. If it is leased to the municipality as provided in the act subject to such lease, the municipality should pay a rental of four per cent upon such valuation.

If the lease was renewed as provided by Section 9 of the act, the rental of six per cent must be based upon such valuation. Such lease could thereafter be assigned to the municipality. Such assignment would permit the subdivision to receive from the lessee the six per cent upon that valuation and would be required to account to the state only at the rate of four per cent based on said valuation."

That which was said by my predecessor in the opinion above noted applies as well to the pertinent provisions of the act here under consideration, and inasmuch as the Legislature in said act has made no distinction as to the rental to be paid by municipal corporations or other political subdivisions taking over by assignment existing leases, it follows that such municipal corporations or other political subdivisions are required in such cases to pay to the State a rental of 4% on the appraised value of the lands covered by such leases as such value is determined by the appraisalment made under the provisions of said act, whether such leases are in their original form or have been renewed by the lessees therein named under the provisions of said act; and this is true notwithstanding the fact that as to such leases as have not been renewed under the provisions of said act by the lessees therein named the mu-

nicipal corporations or political subdivisions to which assignments of such leases are made are entitled to collect from the lessees named in said leases an annual rental of 6% upon the appraised value of the lands covered by said leases made at the time of the execution of said leases.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2661.

DISAPPROVAL, BONDS OF VILLAGE OF CEDARVILLE, GREENE COUNTY, OHIO—\$7,500.00.

COLUMBUS, OHIO, December 10, 1930.

Re: Bonds of Village of Cedarville, Greene County, Ohio, \$7,500.00.

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

GENTLEMEN:—The transcript relative to the above issue of bonds discloses that these bonds have been authorized for the purpose of paying the city portion of the cost of acquiring and constructing a municipal waterworks for supplying water to the corporation and the inhabitants thereof. The total cost of such improvement appears to have been estimated to be \$57,500, \$50,000 of which has been sought to be raised by the levy of special assessments. My Opinion No. 2647, rendered under date of December 9, 1930, to the Industrial Commission, held that these assessments in the amount of \$50,000 were invalid and that the bonds issued in anticipation of the collection thereof were not valid and binding obligations of the municipality. The transcript and financial statement submitted does not disclose that the municipality has available the balance of the required cost of this improvement in the amount of \$50,000 and the question therefore becomes one of whether or not bonds may be authorized for the purpose of paying a small portion of the cost of constructing or acquiring a waterworks when there are no other available funds to enable the municipality to carry out its proposed purpose.

Section 2293-2, General Code, being part of the Uniform Bond Act, provides that "The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct." Municipalities are authorized under paragraph 7 of Section 3939, General Code, also a part of the Uniform Bond Act, "To construct or acquire a waterworks for supplying water to the corporation and the inhabitants thereof and to extend the waterworks system outside of the corporation limits." It is my view that this issue to pay the city portion of the cost of constructing a waterworks is not an issue for the acquisition or construction of a waterworks within the meaning of the applicable provisions of the Uniform Bond Act, particularly under the circumstances hereinabove set forth with reference to the situation existing as to the special assessments heretofore levied.

There is a further question that may be raised with reference to this issue which is whether or not a municipality may be said to have the power to acquire or construct a portion of a waterworks. The case of *State, ex rel. Stanton vs. Andrews, et al.*, 105