

my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2089.

APPROVAL—WATER LEASE, STATE OF OHIO THROUGH DEPARTMENT OF PUBLIC WORKS, FIVE YEARS, ANNUAL RENTAL, \$250.00, WITH ST. MARYS WOOLEN MANUFACTURING COMPANY, ST. MARYS, OHIO, RIGHT TO TAKE WATER FROM HYDRAULIC RACE OF THE MIAMI AND ERIE CANAL, ST. MARYS, AUGLAIZE COUNTY, OHIO, QUANTITY AS DESIGNATED.

COLUMBUS, OHIO, March 12, 1938.

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

DEAR SIR: You have submitted for my examination and approval a water lease in triplicate in and by the terms of which the St. Marys Woolen Manufacturing Company of St. Marys, Ohio, is given the right to take water from the hydraulic race of the Miami and Erie Canal, located in the city of St. Marys, Auglaize County, Ohio, and to use such water for manufacturing purposes.

By this lease, which is one for a stated term of five years from November 1, 1937, said lessee is given the right to take this water from the Miami and Erie Canal at the point above noted or from the level of the canal between Locks 12 and 13 at such times as water is not available in said race; and in consideration of the payment by said lessee of an annual rental of \$250.00, the lessee is authorized under this lease to take from the canal annually a quantity of water up to 12,500,000 gallons, with the further provision that water taken from the canal in any one year over said amount of 12,500,000 gallons shall be paid for at the rate of one cent per thousand gallons.

This lease is one executed by you under the provisions of Section 14009, General Code, which section provides, among other things, that the rentals fixed by the Superintendent of Public Works for water sold from canals and feeders shall be subject to the approval

of the Governor and the Attorney General. It appears from the provisions of this lease that water taken by the lessee up to 12,500,000 gallons in any one year is to be paid for at the rate of two cents per thousand gallons; while, as above noted, water taken by the lessee in excess of this amount in any one year is to be paid for at the rate of one cent per thousand gallons. While it is not altogether clear to my mind just why the rate for the excess water taken and used by the lessee should not be the same as that provided for in the lease as to the water taken and used by the lessee up to 12,500,000 gallons, or perhaps a greater rate, I am not prepared to say that the rental provided for in this lease is not altogether reasonable from the standpoint of the State of Ohio; and more point is given to this observation by the fact that under the provisions of this lease the lessee is returning to the canal all of the water taken by it except so much as is necessary to supply the boilers of the company in the production of steam, and except, I assume, so much of this water as is used for sanitary purposes. In this view and since the provisions of this lease are otherwise in conformity with the provisions of Section 14009, General Code, I am approving this lease as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.