

4763.

## APPROVAL, LEASES TO ABANDONED OHIO CANAL LANDS IN ROSS COUNTY AND FRANKLIN COUNTY, OHIO—CLARENCE E. BOST AND E. J. CORBETT.

COLUMBUS, OHIO, November 23, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my examination and approval two certain canal land leases in triplicate executed by you, by which there are leased and demised to the respective lessees therein named certain parcels of abandoned Ohio Canal lands. These leases, designated with respect to the names of the lessees, the location of the property and the appraised valuations thereof, are as follows:

Clarence E. Bost—Franklin Township, Ross County, Ohio.....	\$100.00
E. J. Corbett—Madison Township, Franklin County, Ohio.....	\$100.00

Upon examination of the leases above referred to, which are each for a term of fifteen years and provide for an annual rental of six per cent upon the appraised value of the parcel of canal land leased, I find that the same have been properly executed by you and by the above named lessees.

Likewise, upon examination of the provisions of said leases and of the conditions and restrictions therein contained, I find that the same are in accordance with section 14203-14, General Code, and other statutes relating to leases of this kind.

I am accordingly herewith approving said leases as to legality and form and I herewith enclose the same with my approval endorsed upon said leases and upon the duplicate and triplicate copies thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4764.

## TOWNSHIP TRUSTEES—MAY INVEST CEMETERY FUNDS IN INTEREST BEARING NOTE SECURED BY FIRST MORTGAGE ON REAL ESTATE.

## SYLLABUS:

*Township trustees, under authority of Section 3458, General Code, may invest cemetery trust funds in an interest-bearing note secured by a first mortgage on real estate.*

COLUMBUS, OHIO, November 23, 1932.

HON. GEO. S. MIDDLETON, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—This will acknowledge your recent request for my opinion which reads:

"The township trustees of McArthur Township, Logan County, Ohio, have upon hand some funds which they have received by gift and bequest for the maintenance of the Huntsville Cemetery and they are desirous of investing the same. We note that under Section 3458, trustees shall invest such funds, referring to funds as outlined in Section 3457, in interest bearing securities. Our question is briefly this: May the trustees loan money on a note secured by a first mortgage on real estate for not more than 50% of the tax valuation of the real estate included in said mortgage?"

Section 3457, General Code, to which you refer, reads as follows:

"The township trustees may receive by gift, devise, bequest, or otherwise, any money, securities or other property in trust, as a permanent fund to be held and invested by them and their successors in office, the income therefrom to be used and expended under their direction, in the care, improvement and beautifying of any burial lot designated and named by the person making such gift, devise or bequest, in any township cemetery over which such trustees have jurisdiction."

Section 3458, General Code, provides in part as follows:

"Such trustees shall invest such funds in their names as such trustees, in interest-bearing securities, \* \* \*."

I assume that your question concerns the authority of the trustees of a township to invest money held in trust for cemetery purposes in an interest-bearing note secured by a first mortgage on real estate.

The weight of authority in the United States is to the effect that a note or mortgage is a "security."

As was stated in *Boston Railroad Holding Co. vs. Commonwealth*, (Mass.) 102 N. E. 650:

"In its ordinary acceptance, the word 'securities' includes bonds, certificates of stocks or of deposit, notes, bills of exchange, and other evidences of indebtedness."

While in the case of *In re Stark's Will*, 134 N. W. 389, the court declared:

"In its broadest sense, the term security embraces all evidences of debt."

See also *Renton vs. Gibson et al.*, (Calif.) 84 Pac. 186.

The question presented by your inquiry is whether or not the Legislature, in using the term "interest-bearing securities," meant the same to be strictly or liberally construed.

In Section 2288-1, General Code, the Legislature has added certain kinds of first mortgages to the expressed types of securities which may be given by depositories in order to secure county (Section 2732 G. C.), board of education (Sections 7605 and 7606 G. C.), or municipal deposits (Section 4295 G. C.).

If the Legislature had intended to give a narrow definition to the type of securities which might be accepted by township trustees as investments of cemetery trust funds, it could have so provided as was done in the sections above mentioned.

It is interesting to note that the recent probate code expressly authorizes the investment of funds held by fiduciaries in certain types of mortgages (Section 10506-41 G. C.), and it may be suggested that good business judgment would require that township trustees in the investment of cemetery funds in interest-bearing notes and mortgages follow the pertinent terms of such section, as to such investments.

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that township trustees, under authority of Section 3458, General Code, may invest cemetery trust funds in an interest-bearing note secured by a first mortgage on real estate.

Respectfully,  
GILBERT BETTMAN,  
Attorney General.

4765.

COUNTY COMMISSIONERS—CO-OPERATING WITH HIGHWAY DIRECTOR ON STATE ROAD IMPROVEMENT—MAY PAY FOR COST OF RIGHT OF WAY WHERE ROAD LESS THAN TWENTY FEET IN WIDTH.

**SYLLABUS:**

*County commissioners of any county, regardless of the size of its tax duplicate, may use county funds to pay for a right of way required by any state highway improvement or repair contemplated by the director, even though such improvement or repair will not produce a pavement of more than twenty feet in width.*

COLUMBUS, OHIO, November 25, 1932.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

QUESTION: May the county commissioners in counties having a tax duplicate of real and personal property less than \$300,000,000 use county funds to pay for a right-of-way on state roads which are being improved to a width of twenty feet or less.”

Section 1191, General Code, reads as follows:

“The commissioners of any county may co-operate with the department of highways in the elimination of railway grade crossings on the state highway system and in the construction or reconstruction of bridges and viaducts, together with the approaches thereto, and shall be authorized to pay such portion of the cost of any such work as may be agreed upon between said commissioners and the director of highways. Said commissioners shall also be authorized to co-operate with said department in constructing, reconstructing, resurfacing or widening a state highway, where the result of such construction, reconstruction, resurfacing or widening is to produce a pavement more than twenty feet in width,