

1270.

CANAL LANDS—LEASED TO CINCINNATI UNDER HOUSE BILL No. 4
—ANNUAL RENTAL.

SYLLABUS:

Upon acceptance by the City of Cincinnati of the provisions of House Bill No. 4, passed by the 88th General Assembly (113 O. L. 21) in the manner provided for in said act, the only annual rental that the City of Cincinnati will be required to pay to the state of Ohio for the Miami and Erie canal lands leased and demised to said city by the lease indentures referred to in said act, is the annual rental fixed by the terms of said act, to wit the sum of one hundred dollars.

COLUMBUS, OHIO, December 7, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you which reads as follows:

“By an act of the 88th General Assembly passed March 5, 1929, and approved March 19, 1929, known as House Bill No. 4, the Governor is authorized to change and amend the lease granted by the State of Ohio to the City of Cincinnati of that portion of the Miami and Erie Canal leased by the State of Ohio to the City of Cincinnati by lease dated August 29, 1912. This lease was superseded by a new lease dated January 6, 1917, executed under authority of the Act passed May 17, 1915.

This lease embraced all of the canal property between a point 300 feet north of Mitchell Avenue in said city, and extending southerly, including the full width of the bed and banks of the canal to the east side of Broadway in said city. This lease calls for an annual rental of \$32,000.00.

A lease of additional canal lands was granted to said city under date of March 28, 1922, and includes the canal property between a point 300 feet north of Mitchell Avenue in said city extending northward over and along the line of the Miami and Erie Canal including the full width of the bed and banks thereof, and likewise widewaters connected with same, to the southerly line of the Village of St. Bernard. The annual rental called for in this lease was \$3,008.00.

By an act of the General Assembly of Ohio passed March 5, 1929, and approved March 19, 1929, the City of Cincinnati, upon the acceptance of said change and amendment by resolution of the council of said city is to be released from all covenants, obligations and agreements for the payment of rental other than One Hundred (\$100.00) Dollars per annum, all provisions, in said lease dated August 29th, 1912, and the amended lease dated January 6, 1917, and the lease dated March 28, 1922, and in said acts of May 17, 1915, and April 18, 1913, *to the contrary notwithstanding.*

The rental accounts for these two leases are carried in the ledgers of the Department of Public Works, and I am at a loss to know just what is intended under the terms of this act.

The total rental of the two leases is \$35,008.00. The act provides for an annual rental to the State of Ohio of \$100.00, in lieu of \$32,000.00, as provided in said lease dated August 29, 1912, and said amended lease dated January 6, 1917, and said lease dated March 28, 1922.

\$32,000.00 is the annual rental called for in the lease of January 6, 1917. The annual rental called for in the lease dated March 28, 1922, is \$3,008.00.

Kindly advise this department whether or not the rental on the latter

lease calling for \$3,008.00, is still in effect and whether or not the annual rental on the original and second lease is to be reduced to \$100.00, leaving the lease dated March 28, 1922, in full force and effect as to the annual rental of \$3,008.00.

We are enclosing herewith copies of the three leases referred to above. Kindly render an opinion on this matter at your earliest convenience."

House Bill No. 4 referred to in your communication is an act passed by the 88th General Assembly, March 5, 1929, approved by the Governor March 19, 1929, and which went into effect on the 19th day of June, 1929 (113 O. L. 21). Sections 1 and 2 of said act are applicable in the consideration of the question presented in your communication. The sections read as follows:

"Section 1. That the Governor of the state shall change and amend the leases to the City of Cincinnati of that portion of the Miami and Erie canal leased by the State of Ohio to the City of Cincinnati by lease dated August 29, 1912, executed under the authority of the act passed May 15, 1911, (102 Ohio Laws, 168), and by the amended lease dated January 6, 1917, executed under the authority of the act passed May 17, 1915, (106 Ohio Laws, 293), and by the lease dated March 28, 1922, executed under the authority of the act passed April 18, 1913, (103 Ohio Laws, 720), so as to provide for a rental payment to the State of Ohio of \$100.00 per annum in lieu of \$32,000 per annum as provided in said lease dated August 29, 1912, and said amended lease dated January 6, 1917, and said lease dated March 28, 1922, and the said City of Cincinnati upon its acceptance of said change and amendment by resolution of the council of the said city, is hereby released from all covenants, obligations and agreements for the payment of rent other than said \$100.00 per annum, all provisions in said lease dated August 29, 1912, and amended lease dated January 6, 1917, and said lease dated March 28, 1922, and in said acts of May 15, 1911, May 17, 1915, and April 18, 1913, to the contrary notwithstanding."

Section 2. "Said lease dated August 29, 1912, and said amended lease dated January 6, 1917, and said lease dated March 28, 1922, and all the terms, conditions, covenants and agreements therein contained as modified in Section 1 of this act, are hereby declared to be valid and in full force and effect, and are hereby ratified and confirmed."

I do not deem it necessary for the purposes of this opinion to restate at length the facts set out in your communication. The lease indenture executed August 29, 1912, as well as that dated January 6, 1917, by which it was amended and superseded, leased and demised to the City of Cincinnati all that part of the Miami and Erie canal between a point three hundred feet north of Mitchell Avenue in said city, and the east side of Broadway in said city; and in both of said leases an annual rental of \$32,000 was reserved.

The lease indenture executed under date of March 26, 1922, leased and demised to the City of Cincinnati that part of the Miami and Erie canal lying between a point three hundred feet north of Mitchell Avenue in said city and the south line of the Village of St. Bernard. The annual rental reserved in this lease was \$3,008. Each and all of the leases above mentioned were for a period of ninety-nine years, renewable forever.

The question made in your communication arises from the fact that the Legislature in the enactment of House Bill No. 4 assumed that the sum of \$32,000 mentioned therein, both in the body of the act and in the preamble thereof, covered the total annual rental to be paid by the City of Cincinnati to the State of Ohio for the interests

in said Miami and Erie canal lands demised to it by all of the several lease indentures referred to in your communication.

A consideration of the provisions of said act as a whole indicates quite clearly a legislative intent that the City of Cincinnati from the time of the effective date of said act and the acceptance of its provisions by the City of Cincinnati, should be required to pay to the State of Ohio for the rights and interests taken by it under said leases, only a nominal annual rental fixed in said act at the sum of one hundred dollars.

The underlying reasons actuating the Legislature in the enactment of House Bill No. 4 was the fact that the portions of the Miami and Erie canal lands covered by said leases, were leased to the City of Cincinnati for the purposes of a subway and boulevard to be constructed by the said city, which subway and boulevard upon construction were open to use not only by the residents and citizens of the City of Cincinnati, but by the public generally.

In this connection it is noted that on April 20, 1927, an act was passed by the 87th General Assembly (112 O. L., 210), authorizing the City of Cincinnati to relinquish to the State of Ohio all those portions of the Miami and Erie canal lands between Broadway in the City of Cincinnati and St. Bernard, which were not required by said city for subway and boulevard purposes, and which were included in the several leases of the State of Ohio to the City of Cincinnati above referred to. Under the authority conferred upon it by the act of April 20, 1927, the State of Ohio, through you as Superintendent of Public Works, has sold and leased and is continuing to sell and lease parcels of said Miami and Erie canal lands relinquished to it by the City of Cincinnati by said act.

That the relinquishment to the State by the City of Cincinnati of those parcels of Miami and Erie canal lands included in the leases here in question, and which were not needed and used by said city for subway and boulevard purposes, was the consideration, so to speak, for the enactment of House Bill No. 4 by the 88th General Assembly, is evidenced to some extent by Section 3 of said act which provides that the State of Ohio is authorized to retain for its own use, all moneys received from the sale or lease of surplus Miami and Erie canal lands in the City of Cincinnati, Hamilton County, Ohio, not required for subway, boulevard or sewer purposes, and which were conveyed to the State by the City of Cincinnati, pursuant to the act of April 20, 1927, above referred to.

By way of specific answer to the question presented in your communication, I am of the opinion that the Legislature, in the enactment of House Bill No. 4, intended that the City of Cincinnati should pay an annual rental of one hundred dollars only for the Miami and Erie canal lands leased and demised to it by each and all of the lease indentures referred to in your communication and in this opinion; and upon acceptance of the provisions of said act by the City of Cincinnati in the manner therein prescribed, you will be authorized to charge an annual rental of one hundred dollars and no more for the canal lands taken by the City of Cincinnati under said leases.

From the facts appearing in your communication and in the above discussion, it is obvious that, in a sense, said House Bill No. 4 as enacted, has the effect of impairing the obligation of contracts existing between the State of Ohio and the City of Cincinnati by virtue of said leases. As to this, it is to be observed, however, that while the contract clauses of the federal and state constitutions "protect parties dealing with the state, it does not affect the validity of statutes releasing obligations due the state;" and if the provisions of said act are assented to by the City of Cincinnati in the manner therein provided, the effect of this act when its provisions are carried out, will be to create a new contract between the parties. 12 Corpus Juris, page 997; *State ex rel. Attorney General vs. Peters*, 43 O. S. 629, 651, 652.

Respectfully,

GILBERT BETTMAN,

Attorney General.