

Feeder Canal property, said plat being on file at the office of Public Works, Columbus, Ohio.

This lease is one executed under the authority of an act of the 79th General Assembly enacted June 8, 1911, 102 O. L., 318; which act, together with section 464, General Code, conferring upon the Superintendent of Public Works all the powers and duties heretofore conferred upon the Board of Public Works, authorizes you to lease the parcel of land above described, which is a part of the Columbus feeder to the Ohio Canal, subject to the approval of the Governor and the Attorney General.

Upon examination of this lease, I find that the same has been properly executed by you as Superintendent of Public Works, acting for the state of Ohio, and by Herbert Taes, the lessee therein named. I further find that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the act of the legislature above noted and with other statutory provisions relating to leases of this kind. I am therefore approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5621.

APPROVAL—LEASE TO OHIO CANAL LAND IN CITY OF  
NEW PHILADELPHIA, TUSCARAWAS COUNTY, OHIO.

COLUMBUS, OHIO, May 27, 1936.

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

DEAR SIR: As requested by you, I have examined a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said Department to the city of New Philadelphia, Tuscarawas County, Ohio. The stated term of this lease as therein provided is ninety-nine years, renewable forever, and the annual rental provided for is the sum of \$182.00, which is four per cent upon the appraised valuation of the parcel of land covered by lease. As to this, the lease provides that the lessee is to have the right to occupy and use for municipal, general business, public park, street and sewerage purposes, that portion of the abandoned Ohio Canal lands located within the city of New Philadelphia, in-

cluding the full width of the bed and embankments thereof, and described as follows :

Beginning at the north corporation line of said city, being a line drawn through station 1717+54, of the G. F. Silliman survey of said canal property through Tuscarawas County, and running thence southerly and westerly with the lines of said canal property five thousand seven hundred fifty-eight and nine-tenths (5,758.9') feet as measured along the transit line of said city, being a line drawn through station 1775+12.9, and containing thirteen and six-hundredths (13.06) acres, more or less.

Excepting therefrom, that portion of said canal property occupied by state highway No. 564, being State Route 16, also the site of the old Canal Lock No. 13, south of the Portage Summit.

With respect to the annual rental to be paid under this lease during the term thereof, it is provided that the property covered by this lease shall be subject to reappraisalment at the end of each fifteen-year period during the term of the lease; and from this it follows that the annual rental of \$182.00 provided for in the lease is for the first period of fifteen years only and that the subsequent annual rental to be paid under the lease is to be determined by the appraised value of the property at the end of each fifteen-year period during the term of the lease.

This lease is executed under the authority conferred upon you as Superintendent of Public Works by Amended Substitute Senate Bill No. 72, enacted by the 89th General Assembly under date of April 29, 1931, 114 O. L., 541. An examination of the provisions of this lease and the conditions and restrictions therein contained shows that the same are in conformity with the provisions of this act and with other statutory enactments relating to leases of this kind with possibly one exception which should be here noted. Section 4 of the act above referred to, which section has been carried into the General Code as section 14203-93, provides that the Superintendent of Public Works, with the approval of the Governor, shall designate hydraulic sections in that part of the Ohio Canal in Tuscarawas, Coshocton and Muskingum Counties which is abandoned for canal purposes by this act. This section likewise provides for the discontinuance of hydraulic sections by action of the Superintendent of Public Works and the Governor after the same have been so designated. In this connection, it is noted that the lease in setting out certain conditions under the head of "Sanitation", provides, among other things, that the city of New Philadelphia "may cut out the flow of water in any part of the canal, whenever said city of New Philadelphia, by a resolution of its council, so directs." It seems obvious to me that the Superintendent of Public Works cannot in a lease of this kind permit the city of New

Philadelphia or any other named lessee to cut the water out of the section of the canal covered by the lease if the effect of such action will be to destroy the character of this section or of some other section of the canal as an hydraulic section theretofore designated as such in the manner provided for by this act. As above noted, the act itself provides how a section of the canal theretofore designated as an hydraulic section shall be abandoned for such purposes and the act does not authorize you as Superintendent of Public Works or any lessee under a lease executed by you to cut the water of the section of the canal and thereby destroy its character as an hydraulic section, unless such section of the canal has first been abandoned for hydraulic purposes by a proper action on your part and by the Governor abandoning the section for hydraulic purposes. As to this, I am advised on inquiry made at your office that there is now no water in this section of the canal other than drainage waters flowing therein; although, in this connection, I am not officially advised whether this section of the canal was ever designated as an hydraulic section or, if so, that the same has ever been abandoned as such in the manner provided by the section of the statute above referred to.

Assuming, however, that the information given to me is correct and that there is now no water in this section of the canal which can be affected by the provision in the lease permitting the city of New Philadelphia to cut the flow of water in the canal at this point, and assuming further that no action that may be taken by the city of New Philadelphia under this provision will destroy or otherwise affect other sections of the canal which have been designated as hydraulic sections, I am approving the lease so far as this question is concerned.

An examination of the lease shows that the same has been properly executed by you as Superintendent of Public Works and as Director of said Department, acting on behalf of the state of Ohio, and by the city of New Philadelphia, by the hand of its Mayor, acting pursuant to the authority of a resolution of Council duly adopted directing the Mayor to sign this lease on behalf of the city. As above noted, I further find, upon examination of the provisions of the lease and of the conditions and restrictions therein contained, that the same are in conformity with all of the statutory provisions relating to leases of this kind with the possible exception above noted and discussed. Upon the considerations above noted, together with the assumptions of fact above made, 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 returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*