

710.

AUTHORITY OF SUPERINTENDENT OF PUBLIC WORKS TO CANCEL
LEASE TO CANAL LANDS IN THE CITY OF TOLEDO.

COLUMBUS, OHIO, August 7, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“Under date of December 1st, 1917, the State of Ohio, by its Superintendent of Public Works, and duly approved by the Governor and Attorney General, leased to the commissioners of Lucas County, the right to lay and maintain a twenty-four (24”) inch sanitary sewer across under the Miami and Erie Canal on a strip of ground eight (8’) feet wide extending across under the canal and its embankments on a line four (4’) feet north of the north line of River Tract No. 14, Town 3, U. S. Reserve, Lucas County, Ohio, extending across under the right of way of the Toledo, St. Louis and Western Railroad Company. This lease was made to enable the County Commissioners to pass their county sewer across under the state canal property.

By an act passed by the 83rd General Assembly of Ohio, there was sold to the city of Toledo, all of the state canal land between the outlet of the Miami and Erie Canal into Swan Creek to a point just below the head of the Maumee side-cut at Maumee, Ohio.

Under this act, the city of Toledo acquired all the land embraced in the canal and its embankments between the terminals as set forth above.

The deed excepts therefrom the right of owners of existing leases of either land or water, or both, and the right of said owners to renewals of said existing leases.

At the date of the sale, this right-of-way across under the canal was occupied by the county sanitary sewer, as constructed by the commissioners under a law authorizing the construction of such sewers outside of municipalities by the county commissioners.

Shortly after the deed conveying the canal property to the city of Toledo, was executed, the county commissioners refused to pay the annual rental on this lease, amounting to \$15.00, and suggested that we mail the bill to the city service director of Toledo.

This was done, as suggested, but the service director refused to pay the annual rental thereon, claiming that the title to the land has passed to the city of Toledo, and refused to pay the accumulated rental, which at the present time, amounts to \$37.50.

This lease is of so little value that we doubt the propriety of undertaking to collect the same through your office and would prefer to cancel the lease, if we may legally do so.

I am enclosing herewith a copy of the lease granted to the commissioners of Lucas County, and also correspondence with Mr. E. Frank Brown, Superintendent of Claims in your department. Kindly return these documents to this office.

In this connection, I respectfully wish to call your attention to the act of the 83rd General Assembly passed January 22nd, 1920, (O. L. 108, part 2, pages 1138-1141).

Kindly advise me whether or not this lease may be legally cancelled. It

is very evident that the city of Toledo does not intend to pay the rental and the county commissioners have also declined to pay the rental as they have accumulated."

Inasmuch as the deed of the State of Ohio by which the canal lands here in question were conveyed to the city of Toledo contained a provision as required by the act of the General Assembly authorizing the execution of the same, excepting from the operation of said deed the rights of owners under then existing leases of said canal lands, and inasmuch as said act by its terms provided that the conveyance of said canal lands to the city of Toledo by such deed should be subject to the rights of the owners of such then existing leases, the lease here in question was in no wise affected by the conveyance of these canal lands to the city of Toledo by said deed; and since the act of the General Assembly under the authority of which said deed was executed did not provide for an assignment of the state's rights under said lease to the city of Toledo, or otherwise require the lessees named in the then existing leases of said canal lands to attorn to the city of Toledo with respect to the payment of rentals under such leases, the lease here in question is in my opinion a valid and subsisting lease upon which the State of Ohio is entitled to recover from the board of county commissioners of Lucas County the rentals therein provided for as they become due and payable.

However, touching the question presented in your communication as to your right and authority to cancel this lease, it will be noted that the lease itself provides that if the board of county commissioners of Lucas County, the lessee therein named, shall violate the terms of said lease, the same, at the option of the lessor, the State of Ohio, shall cease and determine; and it is further in said lease provided that if any installments of rent agreed to be paid by said lessee under the terms of said lease shall not be paid at the time the same shall fall due or within ten days thereafter, whether a demand therefor shall be made or not, then said lease shall at the option of the Superintendent of Public Works become null and void as against the State of Ohio. Inasmuch as on the facts stated in your communication the board of county commissioners of Lucas County has violated the terms of this lease by neglecting and refusing to pay the installments of rent due and payable under said lease, I am of the opinion that you are authorized to cancel said lease if you so desire, by making the necessary finding of facts as to the violation of the terms of said lease by the board of county commissioners of Lucas County.

Respectfully,
GILBERT BETTMAN,
Attorney General.

711.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, SUMMIT COUNTY—\$19,000.00.

COLUMBUS, OHIO, August 7, 1929.

Industrial Commission of Ohio, Columbus, Ohio.