

1941.

SUPERINTENDENT OF PUBLIC WORKS—AUTHORITY TO SELL STATE  
LANDS ACQUIRED UNDER TERMS OF CANAL FUND ACT, 24 O. L.  
58 (1826).

*SYLLABUS:*

*Under the provisions of Section 464, General Code, the Superintendent of Public Works as successor to the powers and duties of the canal commissioners and the Board of Public Works is authorized, subject to the approval of the Governor and the Attorney General, to sell lots and lands acquired by the State under the provisions of the Act of February 7, 1826, entitled: "An Act to provide for the increase of the canal fund by the purchase and sale of real estate." 24 O. L., 58.*

COLUMBUS, OHIO, June 4, 1930.

HON. A. T. CONNAR, *Director, Department of Public Works, Columbus, Ohio.*

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

"Back in 1830, one Paul Williams, one of the original proprietors of the town (now city) of Akron, deeded to the State of Ohio for the benefit of the canal fund, Lots Nos. 139 to 165 inclusive, Lot No. 168, Lots Nos. 232 to 235 inclusive, Lots. 237, 239, 243, 253, 257, 258, 260, 262, 263, 264, 265, 266 and 273. All of these lots are accounted for by transfers direct from the State of Ohio to various grantees.

Lots Nos. 251 and 252 were also included in this conveyance to the State of Ohio, but there is nothing of record in the Department of Public Works or in the Auditor of State's office to show that Lots 251 and 252 were ever disposed of by the State of Ohio, except that these lots were transferred on the County Auditor's record to Jedediah D. Commins about the year 1844.

Mr. Booton has spent a good deal of time in trying to ascertain whether or not there is anything relating to the transfer or sale of these lots to Commins, as shown on the Auditor's Tax Record. The deed was never recorded in the County Recorder's office, but the original grantor and his assigns have been in constant occupation of these lots ever since 1844.

In a miscellaneous memorandum of canal lands purchased and sold, and labeled 'Deeds 1827-1845' page 11, Mr. Booton found a record of the deeds that were conveyed by Simon Perkins, one of the original proprietors of the town of Akron, and another memorandum of lots deeded by Paul Williams, another one of the original proprietors, to the State of Ohio.

There are check marks over practically all of these lot numbers that correspond with the plat of the original town of Akron, and which correspond with the deeds that have been issued by the State of Ohio when these lots were sold for the benefit of the canal fund, and Lots Nos. 251 and No. 252 are checked.

Mr. Booton found also a blue-print upon which red check marks indicate the lots sold and these two lots are checked by lines drawn across the face of the lots on the blue-print. This blue-print was evidently checked up by someone many years ago, and its only value is to indicate the lots sold.

I am enclosing this blue-print herewith, in order that you may gain whatever information it may possibly furnish. Mr. Booton will be glad to exhibit to Mr. Ford the memorandum of deeds to these and other lots, as shown upon page 11 of the document referred to above.

I am also submitting herewith an abstract of title prepared by A. A. Wendt, Attorney at Law, 504-5 Peoples Bank Building, Akron, Ohio.

Mr. Booton states that this will enable these people to remove the cloud upon their respective titles without going into Court with a petition to register title to these lands, making the State of Ohio Party Defendant.

Mr. Booton thinks it is possible that the fund commissioners of the State of Ohio sold these lands for the benefit of the canal fund and that they were credited to this fund, but that the record of the doings of the fund commissioners, as well as that of the Board of Public Works at that early date, cannot be located at the present time.

It is the intention of this department to convey to these parties by quit-claim deed only so much thereof as they have the title of record at the present time.

I am enclosing herewith their application, which correctly describes the portion of these lots that are to be conveyed in case you find that we may accept the proposition of these parties.

Will you kindly render an opinion to this department, stating whether or not we can carry out the proposed scheme of quieting the title to these lots?"

With your communication there was submitted to me an abstract of title which shows that on May 13, 1826, the two lots referred to in your communication, together with a number of other lots in the town plat of the then village of Akron, were conveyed by one Paul Williams, then the owner of the same, to the State of Ohio, and in the deed conveying said lots it was stated that the same were given "in consideration of the benefits which will result to the community in general and to myself in particular from the construction of the Ohio canal and from the foundation of a convenient basin in the village of Akron in said township and county which works are now in a state of progression and also in consideration of the sum of one dollar."

No record of the conveyance of said Lots Nos. 251 and 252 in the town plat of Akron, by the State of Ohio, to any person or persons is found other than such as appears in the County Auditor's Transfer of Lands, Book 1, Page 70, where there is noted a transfer of both of said lots by separate entries from the State of Ohio to one Jedediah D. Commins. In said transfer of record there appears the following notation: "Transferred February 1, 1844 deed from S. .... Bequest." Thereafter, said Lots Nos. 251 and 252 of the town plat of Akron, and the said parcels thereof, passed by mesne conveyances in the chain of title down to the present time when it appears that the W. E. Wright Company is the owner of the south three-fourths of said lots, and one Elizabeth Bell is the owner of record of the north one-fourth of said lots.

It appears from your communication that said W. E. Wright Company and said Elizabeth Bell have made application to you for the purchase of whatever right, title and interest the State may have in said lots.

In the consideration of your communication and the facts above stated, the only question with which I am concerned is that with respect to your authority as Superintendent of Public Works to sell to the above named applicants the right, title and interest of the State of Ohio in and to said lots.

Touching this question, it is noted that on February 7, 1826, the Legislature passed an act entitled: "An Act to provide for the increase of the canal fund by the purchase and sale of real estate." 24 O. L., page 58. Section 1 of this act provided in part, as follows:

"Be it enacted that the canal commissioners be and they are hereby authorized to procure by purchase or otherwise, a suitable number of acres

of land at each and every point of or adjoining the Ohio canals heretofore authorized to be constructed."

It was under the provisions of the above quoted section of said act that the State of Ohio received from said Paul Williams a conveyance of the lots here in question and of the other lots in the town plat of the village of Akron, above mentioned. With respect to the power and authority of the canal commissioners to sell the lots and lands obtained by the State of Ohio under the provisions of said act, Section 2 thereof provided as follows:

"That the canal commissioners are hereby authorized and empowered to sell all such lands and town lots as have heretofore been or may hereafter be given, granted or ceded to the State for the benefit of the canal fund, other than those which are situated at points or places, or are adjoining the line of the Ohio Canals where the surplus water produced by said canals can be advantageously used for hydraulic purposes; and on the receipt of the payment in full of the purchase money, it shall be the duty of the commissioners making the sale of such lands or town lots to forward to the executive office a certified plat and survey of such lands or town lots, containing a pertinent description thereof, together with a certificate that payment has been made in full according to the terms of the sale, stating therein the amount thereof and that the purchaser is entitled to a deed of the lands or town lots therein described, which plat and certificate shall be filed and preserved in the office of the Secretary of State."

A diligent search of statutory provisions enacted by succeeding General Assemblies relating to this subject fails to disclose any act repealing the provisions of Section 2 of the Act of February 7, 1826, above quoted; and the only further inquiry suggested is whether you, as Superintendent of Public Works, now have the power and authority conferred upon the canal commissioners by said act with respect to the sale of such lots and lands. Without tracing or discussing the various statutory provisions enacted from time to time relating to the canal commissioners and the Board of Public Works and those touching their powers and duties concerning lots and lands acquired by the State in connection with the construction of canals in this State it is sufficient to note that by Section 464, General Code, it is provided:

"In addition to the powers and duties herein conferred upon the Superintendent of Public Works, said superintendent shall exercise all of the powers and duties heretofore conferred by law upon the Ohio canal commission and the board of public works with respect to the lease and sale of canal lands other than state reservoir lands dedicated as public parks and pleasure resorts and all other powers and duties now conferred by law upon said canal commission or board of public works, but no land lease, or sale of canal lands or other state lands, shall be made except upon the written approval of the governor and the attorney general."

It appears from the provisions of Section 464, General Code, above quoted, that all the power and authority which the canal commissioners had with respect to the sale of the lots here in question is now conferred upon you and that you are authorized in the exercise of your power and authority as Superintendent of Public Works to convey to the applicants above named the lots here in question and all the right, title and interest of the State of Ohio therein.

The conveyance of said lots pursuant to a sale of the same made by you should be made by a deed to be executed in the manner provided by Section 8523, General Code. This section reads as follows:

"All conveyances of real estate, or any interest therein, sold on behalf of the state, in pursuance of law, shall be drafted by the Auditor of State, executed in the name of the state, signed by the Governor, countersigned by the Secretary of State, and sealed with the great seal of the state. The Auditor thereupon must record such conveyances, in books to be kept by him for that purpose, deliver them to the persons entitled thereto, and keep a record of such delivery, showing to whom delivered, and the date thereof."

As above indicated, the only question that I am deciding in this opinion is that with respect to your authority to sell to said applicants the right, title and interest of the State of Ohio in said lots, and I am not passing on the question as to whether such sale should be made for the purchase price tendered in said application or otherwise.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

1942.

MEMBER—BOARD OF EDUCATION—VOTING FOR SON AS TEACHER—  
 SUBJECT TO PROSECUTION UNDER SECTION 12932, GENERAL  
 CODE—CONTRACT VALID.

**SYLLABUS:**

*A contract with a person to teach in the public schools, if made in all other respects in conformity to law, is not rendered invalid or illegal by reason of its having been entered into by a board of education, one of whose members voted for or participated in its making in violation of the provisions of Section 12932, General Code.*

COLUMBUS, OHIO, June 4, 1930.

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

GENTLEMEN:—I am in receipt from you of the following inquiry:

"A member of a board of education participates in the employment of his son as a teacher in the schools over which the board had control, by voting for his son at a meeting held May 5, 1928; and again on May 4, 1929, such member of the board made a motion to employ his son as a teacher and voted for such employment, all in violation of the provisions of Section 12932 of the General Code.

Question: May the amount of money paid such teacher be recovered upon a finding for recovery made by an examiner from this department?"

Section 12932, General Code, reads as follows:

"Whoever, being a local director or member of a board of education, votes for or participates in the making of a contract with a person as a teacher or instructor in a public school to whom he or she is related as father or brother, mother or sister, or acts in a matter in which he or she is pecuniarily interested, shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both."