

In regard to your request for a reconsideration of an opinion of my predecessor reported in Opinions of the Attorney General for 1929, page 1109, you will note that the question upon which an opinion was sought in that case was whether or not a municipal corporation may legally contract for fire protection with a volunteer company which is a private organization, and legally pay for such protection from public funds. In the opinion of my predecessor referred to by you, a comprehensive discussion was given upon the question of whether or not a municipal corporation could, under the provisions of Section 4393, enter into an agreement with a volunteer fire company whereby such volunteer company would be required to furnish fire protection to the municipal corporation at an agreed price to be paid out of public funds. The then Attorney General, after a thorough consideration of the question, gave an affirmative answer. However, it can readily be seen that there is no analogy between the question presented therein and the facts of the proposed plan in the instant case.

Therefore, in view of the foregoing and in specific answer to your inquiry, it is my opinion that a municipal corporation having a regularly organized fire department may not organize and provide for the housing and maintaining of a volunteer fire department, which department is organized for the sole purpose of serving surrounding townships.

For the reasons above given, I am of the opinion that the plan referred to in your letter, to wit, an arrangement with a volunteer fire company owning a fire truck and equipment, to maintain and house such equipment and furnish the services of a fireman for a period of two years, at the end of which time the truck and equipment is to be transferred to the city, is violative of the statutes of Ohio on competitive bidding and therefore cannot legally be consummated.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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2952.

APPROVAL, RESERVOIR LAND LEASE TO L. VON GERICHTEN OF COLUMBUS, OHIO, OF LAND AT BUCKEYE LAKE, FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, July 25, 1934.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am just in receipt of a communication from the chief of the bureau of inland lakes and parks of the division of conservation in your department, with which he submits for my examination and approval a reservoir land lease in triplicate executed by the conservation commissioner to one L. von Gerichten of Columbus, Ohio. By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of twenty-four dollars, there is leased and demised to the lessee above named the right to occupy and use for cottage site purposes only, the inner slope and waterfront and the outer slope and borrow pit in the rear thereof, that is included in the west half of Embankment Lot No. 80, as laid out by the Ohio Canal Commission on the north bank of Buckeye Lake in Section 22, Town 17, Range 18, Fairfield County, Ohio.

Upon examination of this lease, I find that the same has been properly executed by the conservation commissioner and by L. von Gerichten, the lessee therein named.

I also find, upon examination of the provisions of the lease and the conditions and restrictions therein contained, that the same are in conformity with section 471 and other sections of the General Code relating to leases of this kind.

I am accordingly 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.*

2953.

DISCUSSION OF TITLE TO ABANDONED RIGHT OF WAY OF D. AND  
T. ELECTRIC RAILWAY IN MONTGOMERY AND MIAMI COUN-  
TIES.

COLUMBUS, OHIO, July 25, 1934.

HON. O. W. MERRELL, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval photostatic copies of certain deeds concerning the abandoned right of way of the Dayton & Troy Electric Railway right of way in Miami and Montgomery Counties, along S. H. (I. C. H.) No. 61 U. S. Route No. 25. Such deeds bear reference numbers 80, 96, to 101, both inclusive, 130 to 145, both inclusive, 151 to 157, both inclusive, 7 to 10, both inclusive, 12 to 18, both inclusive, 20 to 22, both inclusive, 24 to 39, both inclusive, 50 to 73, both inclusive, and 76 to 79, both inclusive. You also enclose petition for the appointment of a receiver, waiver of summons, answer of defendant, motion for the appointment of a receiver and entry appointing a receiver, in case No. 73,419 of the Common Pleas Court of Montgomery County, Ohio.

From an examination of the pleadings in such case, it would appear that the Dayton & Troy Electric Railway Company only claims to have a perpetual lease on that part of the railway which is between the cities of Troy and Piqua, but claims to be the owner of the line between the cities of Dayton and Troy. The journal entry appointing the receiver only purports to authorize the receiver to operate the plant pending further order of the court. It is my opinion that unless and until the powers of the receiver are broadened to authorize the sale of the property of the defendant he has no power to sell and dispose of such assets.

Inasmuch as you have not submitted to me the evidence concerning the title of the persons named as grantors in the enclosed deed, I am unable to, and herein express no opinion whatsoever, concerning the title of such grantors. My opinion, as herein set forth, must necessarily be and is, based upon the assumption that the title of such grantors was a good and indefeasible estate in fee simple and without encumbrances.

In deeds Nos. 116, 164, 134, 136, 137, 138, 139, 140, 141, 142, 143, 154, 14, 15, 16, 18, 20, 21, 25, 27, 51 and 52, is contained a covenant obligating the grantee in such deeds to maintain a drain or supply drainage along the property described in such deeds.