June 10, 2009

OPINION NO. 94-045

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
130 South Main, Court #6
Bellefontaine, Ohio 43311

Dear Prosecutor Heaton:

You have requested an opinion concerning the procedure for changing the name of a privately owned island located in Indian Lake. Your specific questions are as follows:

1. Does the Governor of the State of Ohio, by resolution, have the authority to change the name of an island which is privately owned but which is located in a lake that constitutes a State Park; and

2. If the procedure followed by the Governor in the instant case is not sufficient to change the name of an island, where does the authority lie for changing an island's name and what procedure should be followed?

State Parks

Pursuant to R.C. 1541.06, the General Assembly has dedicated certain bodies of water and lands for the use of the public as public parks or pleasure resorts. Among these are "[t]he body of water and adjacent *state* lands in the northwestern part of Logan county, known as the Lewistown reservoir or Indian Lake." R.C. 1541.06(B) (emphasis added). Further, pursuant to R.C. 1541.06, this body of water and adjacent state lands are expressly "named and designated" as "Indian Lake." R.C. 1541.06. R.C. Chapter 1541 does not, however, designate the name of any island located within Indian Lake.

Pursuant to R.C. 1541.081, the chief of the Division of Parks and Recreation of the Department of Natural Resources is authorized to sell state land in or adjacent to Indian Lake. In selling such property, the chief:

may prepare, or cause to be prepared, plats of the areas to be sold and perform all acts necessary to certify, file, and record the plats with the appropriate public officials as provided for in sections 711.01 to 711.39 of the Revised Code.

Upon the sale of any parcel of such lands the state shall cause to be executed and conveyed to the purchaser a quit-claim deed, the form of which shall be approved by the attorney general.

R.C. 1541.081. It is apparently in this manner that the island about which you ask was conveyed to a private owner.

Authority of Governor to Name Privately Owned Real Property

You specifically question the authority of the Governor to change the name of a privately owned island within Indian Lake. Pursuant to Ohio Const. art. III, §5, "[t]he supreme executive power of this state shall be vested in the governor." The meaning of this provision was discussed in 1973 Op. Att'y Gen. No. 73-120 at 2-459, as follows:

> The Supreme Court in *State ex rel. Monroe and Son Co. v. Baker*, 112 Ohio St. 356 (1925), adopted a restrictive view of this language, stating, at page 366, that it does not mean that all executive authority is lodged in the governor, or that "supreme authority" is absolute or arbitrary. The court went on to point out that the "powers and duties of the Governor prescribed by the Constitution constitute his irreducible minimum of power. Additional powers can be either conferred or withheld by legislative enactment."

As a general rule, however, it is a legislative rather than an executive function to name or rename political subdivisions, public rights of way, educational institutions, and the like. *See, e.g., Mount Pleasant v. Beckwith*, 100 U.S. 514, 522 (1879) (county supervisors in state of Wisconsin changed name of township in county); *Cornell University v. Village of Maumee*, 68 F. 418, 419 (C.C.N.D. Ohio 1895) (General Assembly changed name of village of South Toledo to Maumee); *Santa Ana Water Co. v. Town of San Buenaventura*, 65 F. 323, 328 (C.C.S.D. California 1895) (California legislature changed name of street); R.C. 149.302 (establishment of museum to be known as "the national museum of Afro-American history and culture"); R.C. 3335.01 ("[t]he educational institution originally designated as the Ohio agricultural and mechanical college shall be known as _The Ohio State University_"); R.C. 3343.01 ("[t]he educational institution designated Central state college by volume 124, Ohio Laws, page 67, shall be known as _Central state university_"); R.C. Chapter 5533 (naming various memorial highways). Similarly, it appears to be a legislative function to name certain distinctive geographical or physical features, like parks and reservoirs, within its jurisdiction. *See, e.g.,* R.C. 1541.06 (naming of lakes and public parks).

Further, the General Assembly has exercised its legislative power by providing procedures for changing the name of various entities, both public and private. *See, e.g.,* R.C. 503.16 (changing name of township); R.C. 707.25-.26 (changing name of municipality); R.C. 1701.69(B)(1) (changing name of corporation); R.C. 1701.73(D) (recording of change of name of corporation);

R.C. 2717.01 (proceedings to change name of person). R.C. 5541.04, which prescribes a specific procedure by which the name of a county or township road may be changed, states:

> The board of county commissioners of any county, on its own motion or on petition by a person owning a lot in the unincorporated area of said county praying that the name of a county or township road in the immediate vicinity of such lot be changed, upon hearing, and upon being satisfied that there is good cause for such a change of name, that it will not be detrimental to the general interest, and that it should be made, may, by resolution declare the change of the name of such road. The board may include in one resolution the change of name of more than one road.
> A copy of such resolution shall be certified to the county engineer, the county recorder, and the county auditor, who shall all change their records accordingly, but still retain in some manner the old name of the road.

The Revised Code, however, confers no authority upon the Governor or any other executive officer to name or change the name of privately owned real property. Thus there is no basis for concluding that conferring a name upon a parcel of private property, such as an island, is a function imposed upon the Governor either by statute, *cf., e.g.,* R.C. Chapter 107, or as part of the executive power conferred upon him by Ohio Const. art. III, §5. In answer to your first question, therefore, the Governor has no authority either to name or change the name of a parcel of property that is privately owned.

Authority to Name Privately Owned Property

Your second question asks, in the event that the Governor has no authority to change the name of a privately owned island located in Indian Lake, who has such authority and what procedure must be followed to effect such change. Although the Revised Code does not specify a procedure for establishing an official designation or legal name for privately owned property, it appears that certain common law principles may provide guidance concerning this matter.

It is well established that certain rights accompany the ownership of property. As stated in *Callen v. Columbus Edison Electric Light Co.,* 66 Ohio St. 166, 176, 64 N.E. 141, 143 (1902):

> [T]he word "property" is held to denote certain rights in things which pertain to persons and which are created and sanctioned by law. They are, as stated by one writer, "the right of user, the right of exclusion and the right of disposition * * *. A person's right of property in things, therefore, consists of the right to possess, use and dispose thereof in such manner as is not inconsistent with law." (Citations omitted.)

See also Tod v. Wick Brothers & Co., 36 Ohio St. 370, 385 (1881) ("[i]n a strict legal sense, property, whether the term is applied to things animate or inanimate, consists in the right to their use, enjoyment, and disposition"). Accordingly, it would appear that included within a property owner's right to use and enjoy his property to the exclusion of all others is the right to select a name of his choice by which he would like such property to be commonly known.

The right of a property owner to name or rename his property is much like a person's right to adopt a name or to be known by a name other than the name given that person at birth. In 1921 Op. Att'y Gen. No. 2209, vol I, p. 572, the Attorney General considered whether the county sheriff, who was named George L. Ewing at birth, was required to sign official documents using that name or whether he was permitted to sign as "Bob Ewing," the name by which he had always been known and which he had always used as his signature. The opinion began by listing a number of historical figures who, although given a particular name at birth, have become popularly known by other names, *e.g*, Woodrow Wilson (born Thomas Woodrow Wilson), Grover Cleveland (born Stephen Grover Cleveland). The opinion noted that the significance of a name is to establish a person's identity, to distinguish one person from another, and that the "identity of a person, as shown by the appellation by which he is best known in the community and among his friends, may indicate whether he shall sign himself by one name or another." *Id.* at 573. Recognizing that a person may well establish his identity under a name that is not identical to the name given him at birth, 1921 Op. No. 2209 concluded in the third paragraph of the syllabus that, "*the identity of a person is the thing to be looked to*, and your sheriff may sign as Bob Ewing any writs, processes or official papers of his office." (Emphasis added.) Similarly, should an owner of private property whose identity serves as a geographical reference point choose to have his property referred to by a new name, it would appear to be within his rights as owner of the property to rename that property.

Part of your concern appears to be about the effect that a person's renaming of privately owned property will have on any official records with regard to that location. For example, R.C. 5713.09 permits a board of county commissioners to designate the county engineer to provide for making, correcting, and keeping up to date a complete set of tax maps of the county. R.C. 5713.09 further provides:

> Such maps shall show all original lots and parcels of land, and all divisions, subdivisions, and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision, or lot, all new divisions, subdivisions, or allotments made in the county, all transfers of property, showing the lot or parcel of land transferred, the name of the grantee and the date of the transfer so that such maps shall furnish the county auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the county board of revision and the auditor, and shall be kept in the office of the auditor.

The county engineer or other public authorities may prepare other maps for general distribution as well. *See, e.g.*, R.C. 149.17 (Director of Transportation prepares copyrighted highway maps of the state); R.C. 1505.01(E) (requiring the Division of Geological Survey to make maps and other material "portraying the geological characteristics and topography of the state, both of general nature and of specific localities"); R.C. 5543.04 (county engineer, under the direction and supervision of the Director of Transportation, prepares maps showing, among other things, all public roadways within the county, municipalities, lakes, schoolhouses, and rivers).

In the situation about which you ask, it appears that the name of the privately owned island should be changed on the county tax maps and other official maps to reflect the island's current name. Although R.C. 5713.09 does not require county tax maps to include names given to privately owned parcels of property as a general matter, such maps typically do include a number of geographical points of reference that are identified by their proper names. Should the island with which you are concerned, designated by its former name, have been included as a point of reference or for informational purposes in a previously prepared tax map of the county in which it is located, or on any other official map, the owner may inform the engineer or other public authority that the next version of that particular map is to be changed to reflect the new name. To the extent that there may be applicable local regulations or other legal provisions concerning the registration or recording of such a name change, the owner must first comply with any such regulations. In addition, if any fees or specific additional costs must be incurred as a result of the name change, the owner must comply with any applicable provisions requiring the owner to remit the amount of any such fees or costs to the appropriate public authority. *Cf.* R.C. 2101.16(A)(14) (fee for petition for change of a person's own name).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. The Governor of Ohio is without authority under Ohio law to designate the official name of a privately owned island.

2. In the absence of any specific statutory provisions to the contrary, and as an incidence of his lawful ownership of the property, an owner of private property is legally authorized to name or rename any geographical point of reference that is located entirely on private property that he owns.

Respectfully,

LEE FISHER
Attorney General

June 10, 2009

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Logan County Prosecuting Attorney
130 South Main, Court #6
Bellefontaine, Ohio 43311

SYLLABUS: 94-045

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Although there are various provisions within the Revised Code governing the registration of names for certain purposes, *see, e.g.*, R.C. 149.304 (registration of historic Ohio homesteads and tracts of land); R.C. 1329.01 (registration of trade names), the law in Ohio makes no provision for providing a legal name for privately owned real property.

Beyond the information required by R.C. 5713.09 to be included in the tax maps, however, the preparation and correction of such maps is within the control of the county engineer. *See generally State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 459, 166 N.E.2d 365, 372 (1960) ("[w]here a statute clearly confers power to do a certain thing without placing any limitation as to the manner or means of doing it, and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption is that it should be performed in a reasonable manner *not in conflict with any law of the state. State, ex rel. Atty. Genl., v. Morris*, 63 Ohio St., 496, 512 , 59 N.E., 226" (emphasis in original)).

Indeed, such a property right as was conferred at the common law stands on legal ground far superior to the actual origins of most place names, which were generally derived from references made or collected by transients, explorers, or early settlers. The colorful if dubious origins of such nomenclature were immortalized by the poet Stephen Vincent Benét, who wrote:

> I have fallen in love with American names,
> The sharp names that never get fat,
> The snakeskin-titles of mining-claims,
> The plumed war-bonnet of Medicine Hat,
> Tucson and Deadwood and Lost Mule Flat.
>
> ....
>
> I shall not rest quiet in Montparnasse.
> I shall not lie easy at Winchelsea.
> You may bury my body in Sussex Grass,
> You may bury my tongue at Champmédy.
> I shall not be there. I shall rise and pass.
> Bury my heart at Wounded Knee.

Stephen Vincent Benét, American Names, in *Panorama of Modern Literature*, 532-33 (1934).