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DOCK EXTENDING OVER BODIES OF WATER—ANNUAL FEE CHARGED TO PRIVATE OWNER OF LAND ADJACENT TO DOCK—IF OWNER HAS MORE THAN ONE BOAT REGULARLY MOORED AT DOCK HE SHALL BE CHARGED A FEE FOR EACH ADDITIONAL BOAT—SECTION 1541.22 RC, AM. SB 316, 100 GA—AM. SB 207, 100 GA REPEALED BY AM. SB 316.

SYLLABUS:

Section 1541.22, Revised Code, as amended by Amended Senate Bill No. 207, passed July 8, 1953, approved by the Governor July 17, 1953, filed with the Secretary of State, July 20, 1953 and effective October 19, 1953 has been repealed by Amended Senate Bill No. 316, passed July 14, 1953, approved by the Governor July 27, 1953, filed with the Secretary of State July 27, 1953 and effective October 26, 1953; Section 1541.22, Revised Code, as currently in force and effect, is that section as enacted by Amended Senate Bill No. 316.

Columbus, Ohio, December 30, 1953

Hon. A. W. Marion, Director, Department of Natural Resources
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion as to whether the Department of Natural Resources is authorized to collect an annual dock fee from private owners of land adjacent to certain lakes as authorized by the terms of Section 1541.22, Revised Code, as amended by Amended Senate Bill No. 207 of the 100th General Assembly, in view of the later amendment of Section 1541-22 by the passage of Amended Senate Bill No. 316, which latter bill does not contain such authorization.

Amended Senate Bill No. 207 was passed by the General Assembly on July 8, 1953, approved by the Governor on July 17, 1953, filed with the Secretary of State on July 20, 1953 and thus became effective on October 19, 1953. The new language added to Section 1541.22 at that time read:

“An annual fee of three dollars shall be charged to the private owner of land adjacent to and having a dock extending over the bodies of water listed in section 1541.06 of the Revised Code. If such owner has more than one boat regularly moored at such

dock he shall also be charged a fee of one dollar for each additional boat. Under the provisions of this section 'dock' is defined as that part of a superaqueous structure which may be used for the wharfing of small craft."

Amended Senate Bill No. 316 was passed by the General Assembly on July 14, 1953, approved by the Governor on July 27, 1953, filed with the Secretary of State on July 27, 1953, and thus became effective on October 26, 1953. By the terms of this act Section 1541.22 was amended to read as follows:

"The chief of the division of parks shall collect all rentals for leases of state lands, and moneys for pipe permits, boat and motor licenses, dock licenses, concession fees, and moneys for special privileges of any nature from all lands and waters operated and administered by the division of parks or the division of wildlife. He shall keep a record of all such payments showing the amounts received, from whom, and for what purpose collected. Upon transmittal of such funds to the treasurer of state, the transmittal report shall indicate the purpose for which collection was made. A duplicate copy of such report shall be sent to the auditor of state and to the director of natural resources. All such funds shall be credited to the 'state park rotary fund' hereby created. All receipts from the rental of cabins and lodges in the state parks, together with all other moneys derived from the operation of the lands, waters, facilities, and equipment by the division of parks shall accrue to the credit of such fund.

"Such fund shall not be expended for any purpose other than the administration, operation, maintenance, development, and utilization of lands and waters, and for facilities and equipment incident thereto, administered by the division of parks; or for the further purchase of lands and waters by the state for park and recreational purposes.

"Such fund shall be subject to the same audit as general appropriation funds and a report properly certified by the auditor of state showing receipts and expenditures furnished to the general assembly."

As pointed out in your letter of request, Section 1541.22, as amended by Amended Senate Bill No. 316, contains no language authorizing the charging of a dockage fee. Amended Senate Bill No. 316, also amended Section 1505.05 and Section 2 of the Act provided:

"That existing sections 1505.05 and 1541.22 of the Revised Code are hereby repealed."

Bearing in mind the fact that legislation speaks as of the day it becomes effective, and the requirements of Article II, Section 16 of the Ohio Constitution that "no law shall be * * * amended unless the new act contains the entire act * * *, or the section or sections amended, and the section or sections so amended shall be repealed," I believe it clear that Section 1541.22, in force and effect at this time, is Section 1541.22 as amended by Amended Senate Bill No. 316, and that Section 1541.22, as amended by Amended Senate Bill No. 207, was repealed at the time Amended Senate Bill No. 316 took effect, i.e., October 26, 1953.

In support of this conclusion, I direct your attention to the cases of State, ex rel. Guilbert v. Halliday, 63 Ohio St., 165, and Rogers v. The State, ex rel. Lucas, 129 Ohio St., 108.

The Guilbert case involved a situation where the 74th General Assembly had twice amended Section 2813 of the Revised Statutes by bills passed and signed the same day. The court held the act which was signed later, even though on the same day, to be controlling as to the then existing language of Section 2813, Revised Statutes, and held that the act signed later constituted a repeal of the former act to the extent that Section 2813, Revised Statutes, was concerned.

The Rogers case involved a situation where the 90th General Assembly had amended Sections 5527 and 5541 of the General Code by two separate acts, one passed February 27, 1933 and the other on June 30, 1933. The act passed in June was held to be controlling and to have the effect of repealing Sections 5527 and 5541 as amended by the act passed in February.

I am aware of the potential argument that since Amended Senate Bills Nos. 207 and 316 were pending before the General Assembly at the same time, and since each amended Section 1541.22 in totally different respects, the actual intent of the members of the General Assembly was to effectuate both amendments. As stated in the case of Slingluff v. Weaver, 66 Ohio St., 621, however, "The question is not so much what did the legislature intend to enact, as what did it mean by what it did enact."

In conclusion, it is my opinion that Section 1541.22, Revised Code, as amended by Amended Senate Bill No. 207, passed July 8, 1953, approved by the Governor July 17, 1953, filed with the Secretary of State July 20, 1953 and effective October 19, 1953 has been repealed by Amended

Senate Bill No. 316, passed July 14, 1953, approved by the Governor July 27, 1953, filed with the Secretary of State July 27, 1953 and effective October 26, 1953, and that Section 154I.22, Revised Code, as currently in force and effect, is that section as enacted by Amended Senate Bill No. 316.

Respectfully,

C. WILLIAM O'NEILL
Attorney General