

6061

1. CONSERVANCY DISTRICT—ORGANIZED PURSUANT TO CHAPTER 6101., RC—POLITICAL SUBDIVISION OF STATE—LANDS OWNED OR ACQUIRED BY CONSERVANCY DISTRICT NOT LANDS OWNED OR ACQUIRED BY STATE.
2. STATE HIGHWAY PATROL—HAS JURISDICTION TO ENFORCE STATE LAWS—TRAFFIC REGULATION AND SAFETY ON ANY PUBLIC ROAD LOCATED WITHIN CONSERVANCY DISTRICT.

SYLLABUS:

1. A conservancy district, organized pursuant to Chapter 6101., Revised Code, is a political subdivision of the state, and lands owned or acquired by a conservancy district are not lands owned or acquired by the state.

2. The State Highway Patrol has jurisdiction to enforce the laws of this state pertaining to traffic regulation and safety on any *public* road located within a conservancy district.

Columbus, Ohio, December 16, 1955

Hon. U. C. Felty, Director, Department of Highway Safety
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“From time to time the State Highway Patrol has been confronted with several problems within the Muskingum Water Shed Conservancy District. They have been questioned as to why they

do not patrol the various roadways within the Conservancy District. There have been questions in regard to the limitations of the State Highway Patrol as to their powers and jurisdiction over the district. Your opinion is requested so that I might advise the Superintendent as to his legal authority over the district.

"I would appreciate an answer to the following questions that have confronted our department.

"1. Are the lands within the boundaries of what is known as the Muskingum Water Shed Conservancy District owned by the State of Ohio?

"2. Do the traffic laws of the State of Ohio prevail on these certain roads?

"3. If the land within the Conservancy District is owned by the State of Ohio, does the State Highway Patrol have authority to enforce the criminal laws on same?

"Please advise me if there are any further powers or limitations concerning this district and similar districts."

Your first question is undoubtedly prompted by the provision in Section 5503.02, Revised Code, to the effect that the superintendent of the state highway patrol or any patrolman "may enforce the criminal laws on all state properties and state institutions, owned or leased by the state." Are the lands within a conservancy district owned by the state?

Chapter 6101., Revised Code, treats in detail with the organization, administration, and powers of conservancy districts. A conservancy district is organized for the purposes enumerated in Section 6101.04, Revised Code, and it is established by the order of a court of common pleas following the filing of a petition therein and a hearing on the petition. The district may be comprised of many counties, and I understand that the Muskingum Watershed Conservancy District embraces all or portions of twenty-two counties for administrative and taxing purposes.

Section 6101.08, Revised Code, relative to the hearing on petition for the organization of a conservancy district provides in material part as follows:

" * * * Upon the hearing, if it appears that the purposes of sections 6101.01 to 6101.84, inclusive, of the Revised Code, would be subserved by the creation of a district, the court, after disposing of all objections as justice and equity require, shall by its findings, duly entered of record, adjudicate all questions of jurisdiction,

declare the district organized, and give it a corporate name by which in all proceedings it shall thereafter be known. A district so organized shall be a political subdivision of the state and a body corporate with all the powers of a corporation, and shall have perpetual existence, with power to sue and be sued, to incur debts, liabilities, and obligations, to exercise the right of eminent domain and of taxation and assessment as provided in such sections, to issue bonds, and to do all acts necessary and proper for the carrying out of the purposes for which the district was created and for executing the powers with which it is invested.

* * *”

(Emphasis added.)

A conservancy district, therefore, is a political subdivision in its own right, exercising sovereignty relative to its defined statutory purposes. It is an authority separate and distinct from the State of Ohio and the counties which are situated within its geographical limits. It has the power to tax, to contract, and to sue and be sued.

The conservancy district is governed by a board of directors who prepare a plan for the improvements for which the district was created, and whose duty it is to administer the affairs of the district. The board of directors, far from being officers of the State of Ohio, frequently will enter into a contract on behalf of the conservancy district with the State of Ohio. The conservancy district also has the power of eminent domain, and lands acquired by it are owned *by the district* rather than by the state. In view of the foregoing, it is evident that a conservancy district is a political entity distinct from the state itself, being sovereign within its sphere, and any lands acquired or purchased by it are owned by the district itself.

The more fundamental question raised by your request involves an examination of the statutes governing the traffic enforcement powers of the state highway patrol, to determine whether the uniform traffic laws of Ohio are enforceable by the patrol on roads serving a project under the control and jurisdiction of a conservancy district.

Section 5503.02, Revised Code, provides in part as follows:

“The state highway patrol shall enforce the laws of the state relating to the registration and licensing of motor vehicles; enforce, on all roads and highways, notwithstanding section 4513.39 of the Revised Code, the laws relating to the operation and use of vehicles on the highways, enforce and prevent the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the

highway pavements and structures on such highways, investigate and report to the public utilities commission violations of its rules and regulations and the laws governing the transportation of persons and property by motor transportation companies and all other motor carriers for hire, investigate and report violations of all laws relating to the collection of excise taxes on motor vehicle fuels; *and regulate the movement of traffic on the roads and highways of the state*, notwithstanding section 4513-39 of the Revised Code.” (Emphasis added.)

It will be observed that the statute refers to enforcement of the traffic laws on “all roads and highways.” The legislature has employed rather sweeping language, and it would appear that something broader in meaning than what is known as the “state highway” system was intended.

The word “road” is uniformly taken to mean a *public* way or highway, in both legal and common acceptance. See *Heiple v. City of East Portland*, 8 P., 907, 909. “Roads” and “highways” are generic terms, embracing all kinds of *public* ways, such as county and township roads, streets, etc. See *Shannon v. Martin*, 139 S.E., 671, 672.

In view of the purpose sought to be accomplished by the legislature, which was the protection of the motoring public through traffic law enforcement, the statutory reference to “all roads and highways” merits a construction liberal enough to enable the highway patrol to perform its function effectively. This means that *public* roads, wherever located, conservancy districts not excepted, are within the patrol’s authority to patrol.

Many of the roads within the geographical limits of a conservancy district are part of what is known as the “state highway system.” Others are county or township roads. Still others are roads constructed or acquired by the conservancy district itself for the purpose of serving one or more of the district’s projects. A road fitting within the last category, if open to the public access, is as much within the power of the patrol to police as is any other public road.

Since there are a number of conservancy districts within the State of Ohio, and since a given district may embrace *many* counties, it is undoubtedly a fact that almost *all* of the public roads within this state are *also* situated within a conservancy district. Therefore, the mere fact that a certain road (open to the public) lies *within* a conservancy district, has no particular significance with respect to the powers and duties of the state

highway patrol in the field of enforcing the traffic laws of the state on the "roads and highways."

I take it that the roads actually involved in your request are roads constructed or acquired by the conservancy district itself rather than by the state or county.

Many of the roads constructed by the district are *public* roads, in that they are open and accessible to public travel. In this regard it will be noted that pursuant to authority found in Section 6101.25, Revised Code, the board of directors of a conservancy district may construct, operate, and maintain parks, parkways, forest preserves, bathing beaches, playgrounds and other recreational facilities upon the lands owned or controlled by the district. Roads constructed for the purpose of serving such recreational areas are obviously intended for the public use.

Other roads are constructed by the district to provide vehicular access to a particular public improvement, such as a conservancy dam. Some of these roads may be closed off to the flow of public traffic, others may be open to the public.

It undoubtedly happens that a conservancy district finds it necessary or advisable to relocate a public road which it had at an earlier time constructed. The road formerly utilized may be abandoned by the district in such a manner as to extinguish the right of access and use once enjoyed by the motoring public, resulting in the road's assuming a new status as a purely private way.

The foregoing considerations present questions purely of fact as to whether a given road *is* or *is not a public* road or thoroughfare, the character of which necessarily must be determined in each particular instance. Any opinion I might render could not possibly envision all of the many fact situations which might be prevalent.

It should be recognized that the board of directors of a conservancy district has been granted police powers over the works of the district. Section 6101.75, Revised Code, provides in material part as follows:

"The board of directors of a conservancy district may police the works of the district, and in times of great emergency may compel assistance in the protection of such works. The board may prevent persons, vehicles, or livestock from passing over the works of the district in any manner which would result in damage thereto.

“Such employees as the board designates for that purpose have all the powers of police officers within and adjacent to the properties owned or controlled by the district. * * *”

(Emphasis added.)

This statute grants police powers to the board which apparently are limited to the prevention of damage to the “works” of the district. I do not interpret this statute as evincing a legislative intent that the police of the conservancy district have *exclusive* jurisdiction on roads owned or controlled by the district. In the first place, the purpose or object of the grant of police power to the district, is distinct from the objects and purposes underlying the authority of the state highway patrol. The conservancy district police are to prevent vehicles from passing over the works of the district in any manner which would damage them. The highway patrol’s function is to enforce the uniform traffic code and regulate the movement of traffic on “all roads and highways.” In addition to this, it will be observed that Section 5503.02, Revised Code, *supra*, itself specifically recognizes that “the powers and duties conferred on the patrol shall be supplementary to and in no way a limitation on the powers and duties of sheriffs or other peace officers of the state.”

Your third question is closely allied with your first question, in that it is predicated on the hypothesis that lands within a conservancy district are *owned* by the State of Ohio. I reiterate that lands lying within a conservancy district, whether they be part of a conservancy *project* or merely lands geographically situated within the multi-county area embraced by the district, are not *state* owned lands. Naturally, the State of Ohio might own a *particular* strip of land or property within the counties over which the conservancy district has been superimposed, for example, land on which there is located a state hospital or institution, and of course in such an instance the patrol has authority to enforce the criminal laws of the state on such state property, pursuant to the authority granted in Section 5503.02, Revised Code.

Accordingly, it is my opinion that:

1. A conservancy district, organized pursuant to Chapter 6101., Revised Code, is a political subdivision of the state, and lands owned or acquired by a conservancy district are not lands owned or acquired by the state.

2. The State Highway Patrol has jurisdiction to enforce the laws of this state pertaining to traffic regulation and safety on any *public* road located within a conservancy district.

Respectfully,

C. WILLIAM O'NEILL

Attorney General