

then due and payable, and one-fifth of the existing delinquent taxes, penalties and assessments it is the duty of the county treasurer to credit such payment in payment of the current tax, and any remainder existing should be credited toward the payment of the interest on all delinquent installments of taxes, penalties and interest which have for the greatest time remained delinquent.

(2) When a taxpayer at a time other than that at which semi-annual installments of taxes and assessments are payable, pays to the county treasurer a sum of money to be applied toward the payment of an installment of delinquent taxes without designating the manner of application it is within the discretion of the tax collecting authorities to apply such moneys toward the payment of the longest delinquent or the latest becoming delinquent items of taxes appearing upon the tax duplicate.

(3) When a taxpayer induces the county treasurer to receive moneys to be credited in payment of delinquent taxes in a manner other than as authorized by statute such taxpayer is in particeps criminis with the county treasurer in such illegal payment and by reason thereof, should not be heard to complain that such taxes were credited in payment of the installment of taxes for which such moneys were paid.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1996

SUPERINTENDENT OF PUBLIC WORKS—UNAUTHORIZED TO CONSTRUCT RESERVOIRS OR ARTIFICIAL LAKES SOLELY FOR PARKS OR RECREATIONAL PURPOSES—CONSERVATION COUNCIL AUTHORIZED SO TO DO WHEN.

SYLLABUS:

The Superintendent of Public Works is not authorized by sections 412-1 to 412-15, inclusive, General Code, to construct reservoirs or artificial lakes solely for parks or recreational purposes, but such authority may be exercised by the Conservation Council where such Council deems it proper in the construction, maintenance, use, extension or enlargement of state parks.

COLUMBUS, OHIO, December 12, 1933.

State Water Conservation Board, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication, which reads as follows:

“In view of the fact that there is a demand for the establishment of artificial lakes in the State of Ohio for the carrying out of a more complete water conservation program, I desire to ask for your opinion as to the interpretation of the possibilities of advanced ideas and present developments as set forth in Section No. 412, et seq., of the General Code.

We hope that the interpretation of this part of the conservation laws of the State of Ohio will give our Public Works Department the privilege of utilizing the water benefits for the public good as amortizing possibilities

in the issue of bonds as set forth in said sections, outside of canal and hydraulic power with general draw-down uses of water; for example, I am enclosing memoranda of a study that I have been making for over a year of a park and lake proposition in Clinton County on Cowans Creek to the southwest of Wilmington.

This lake would be used by over a million people within a radius of 50 miles for recreational purposes entirely and the leases of property surrounding the lake would be based upon the recreational advantages, privileges, and benefits derived from a bank-full body of water the year around.

This proposed water conservation project would give the State a fine body of water with a large acreage of surrounding land for park purposes to be leased by the State Public Works Director at estimated prices sufficient to liquidate the cost of the project for which the bonds would be issued.

The number of years of conservation development since this law was put into the statutes have developed demands for water benefits of greater intrinsic value than simply hydraulic power or industrial water supplies as would seem to be implied in this statute.

In our search for legal means of water conservation in its broadest aspects, we desire to find an interpretation of the statutes of the State that will permit Ohio to take advantage of the advancement that is being made in such rapid strides at this time."

Sections 412-1 to 412-15, inclusive, General Code, comprise an act designated by the legislature for the purpose of "preventing destructive floods and conserving and preventing waste of the waters of the streams, lakes and public waters of the state of Ohio, and to provide for the sale or lease to the public of such water for agricultural, commercial, manufacturing and other public purposes." Section 412-1 reads in part as follows:

"That, in addition to all other powers granted to and duties devolving upon the superintendent of public works, as provided by law, when in his judgment he deems it for the public welfare and the best interests of the citizens of the state, that the surplus, flood and other waters of any of the watersheds, rivers, streams, water courses or public waters should be conserved, impounded and stored in order to insure and promote the public health, welfare and safety, and to encourage and promote agriculture, commerce, manufacturing and other public purposes, he shall proceed as provided by law, and in furtherance of the purposes of this act (G. C. secs. 412-1 to 412-15) and the preservation of the use of such waters for navigation in case the same shall be required therefor, to construct such reservoirs, dams, storage basins, dikes, canals, raceways and other improvements as may be necessary for such purposes, or he may make additions to, enlarge and make alterations in and upon such reservoirs, dams, storage basins, dikes, canals, raceways, and other improvements, then in existence and constituting a part of the public works, as may be necessary for such purposes; but no rights or privileges herein granted shall in any wise interfere with the control and maintenance of the state reservoirs or public parks which have been dedicated to the public for purposes of recreation and pleasure.

Said superintendent may, subject to the written approval of the governor of the state, acquire by gift, purchase or by appropriation proceedings, in the name of and on behalf of the state of Ohio, such real and personal property, rights, privileges and appurtenances as may be necessary in his judgment for the construction of such reservoirs, dams, storage basins, dikes, canals, raceways and other improvements, or for the alteration, enlargement or maintenance of such existing reservoirs, dams and other improvements, together with such rights of way, drives and roadways as may be necessary for convenient access thereto."

Section 412-2 provides for the issuance of bonds which are not to be considered an indebtedness of the state of Ohio, but which "shall be paid, both principal and interest, solely out of the proceeds arising from the sale or lease of the water impounded and conserved or the power generated by the improvements constructed, altered or enlarged by said superintendent of public works, in accordance with the term and provisions of this act (G. C. secs. 412-1 to 412-15), or from the proceeds of the sale on foreclosure, of the lien securing said bonds on such improvement or such part thereof as may be constructed from the money realized from the sale of said bonds, as hereinafter provided." Section 412-5 reads in part as follows:

"The superintendent of public works shall, by contract, in writing, sell or lease, to be used for agricultural, commercial, manufacturing or other lawful purposes, for any term not exceeding twenty-five years, the water, or any part thereof, conserved and stored by such improvement or improvements then existing, or that will be conserved and stored by any such improvements thereafter to be constructed by him, as shown by the plans and specifications prepared by him therefor, and approved by the governor of the state, as herein provided, for a certain price or rental for the water furnished to or used by such grantees, lessees or their assigns, to be paid quarterly, semi-annually or annually as he may deem advisable.

Said superintendent of public works may, for a term not exceeding twenty-five years, sell or lease power generated by any head of water raised or maintained by any such improvements, or he may sell or lease the right to use such head of water for generating power or other hydraulic purposes. All such contracts of sale or lease, whether for water or power, shall contain such reservations or restrictions as the superintendent of public works may deem necessary and proper, in furtherance of the purposes of this act (G. C. Secs. 412-1 to 412-15) and the preservation of the use of such waters for navigation in case the same shall be required therefor."

Section 412-6 reads in part as follows:

"In order to ascertain whether the public interest and welfare reasonably require such improvements in the locality where it is proposed to construct the same, and whether the revenues which the state may derive from the leasing and sale of the waters which are estimated will be conserved, impounded and stored, or the power generated thereby, will be sufficient to pay the interest on the bonds to be issued, to create a sinking fund to retire said bonds at their maturity, and to maintain and keep said improvements in repair, the superintendent of public works may before selling such bonds

or receiving bids for such construction enter into tentative agreements for the sale or lease of such water, or power, * * *.”

Section 412-11 provides that:

“The funds derived from the sale or lease of the water impounded and conserved or the power generated by said improvements are hereby expressly pledged for the purpose of maintaining and keeping in repair said improvements and for the payment of the interest and principal of said bonds, as the same fall due and mature, * * *.”

A reading of this act shows that the intention was to limit the purposes of this act to those of flood prevention, water supply and power and that it does not authorize the construction of reservoirs or artificial lakes solely for park or recreational purposes. The phrase “other public purposes” contained in section 412-1 refers to purposes kindred in their nature to those therein specified.

However, it is my opinion that the powers of the Conservation Council are broad enough to authorize it to construct reservoirs or artificial lakes where such Council deems it proper in the construction, maintenance, use, extension or enlargement of state parks. Section 472, General Code, reads in part as follows:

“All lands and waters now or hereafter dedicated and set apart for public park or pleasure resort purposes, or which may hereafter be acquired for such purposes, shall be under the control and management of the conservation council, who shall protect, maintain and keep them in repair. The conservation council shall have the following powers over all such lands and waters, to-wit: To make alterations and improvements thereof, to construct and maintain dikes, wharves, landings, docks, dams and other works, and to construct and maintain such roads and drives in, around, upon and to such lands and waters as shall make them conveniently accessible and useful to the public. And said conservation council may, subject to the approval of the attorney general, acquire by gift, purchase or by appropriation proceedings, on behalf of the state, such real and personal property, rights and privileges as may be necessary in its judgment for the use, extension, enlargement and maintenance of such public parks and resorts, and for new public parks, resorts, reservoirs, channels, drives, roadways, docks, dams, landings, wharves and other improvements. The value of such real or personal property, together with the cost of appropriation, where appropriation proceedings are necessary, shall be paid out of the funds derived from the sale of special privileges and from leases of state land in and adjacent to the parks or pleasure resorts for which such purchase or appropriation is made, or when such costs exceed one thousand dollars, then out of moneys in the general revenue fund appropriated for such purposes, but no expense for these purposes shall be incurred until the general assembly has first appropriated the money therefor. * * *”

It is also seen that express authority is given under this section to lease lands adjacent to such parks or pleasure resorts, while no such power is given by the act hereinbefore mentioned. I am of the opinion therefore that the Superintendent of Public Works is not authorized by sections 412-1 to 412-15, inclusive, General Code,

to construct reservoirs or artificial lakes solely for parks or recreational purposes, but that such authority may be exercised by the Conservation Council where such Council deems it proper in the construction, maintenance, use, extension or enlargement of state parks.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1997.

APPROVAL, BONDS OF CITY OF SALEM, COLUMBIANA COUNTY,
OHIO—\$4,000.00.

COLUMBUS, OHIO, December 12, 1933.

Industrial Commission of Ohio, Columbus, Ohio.

1998.

INFIRMARY—COUNTY COMMISSIONERS NOT REQUIRED TO ADVERTISE FOR BIDS BEFORE CONTRACTING FOR FURNISHING OF MEDICAL RELIEF AND MEDICINES THEREFOR.

SYLLABUS:

County commissioners may, but are not required to, advertise for bids before contracting for the furnishing of medical relief and medicines as provided by section 2546 of the General Code.

COLUMBUS, OHIO, December 13, 1933.

HON. RUSSELL M. WILHELM, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication in which you inquire whether or not it is mandatory for the county commissioners to advertise for bids before entering into a contract for the furnishing of medical relief and medicines provided by section 2546, General Code. Said section reads as follows:

“The county commissioners may contract with one or more competent physicians to furnish medical relief and medicines necessary for the inmates of the infirmary, but no contract shall extend beyond one year. Medical statistics shall be kept by said physician, who shall report same to the county commissioners quarterly showing the nature and extent of the services rendered, to whom, and the character of the diseases treated. The commissioners may discharge any such physician for proper cause. No medical relief for persons in their homes shall be furnished by the county, except for persons who are not residents of the state or county for one year, or residents of a township or city for three months, and except under provisions of section 2544.”