

upon the bonds. This they could have done at home, although doubtless the time consumed in executing them individually would be a great deal more than that occupied by the use of the signature machine. Yet there may be facts peculiar to this situation that would justify the expenditure and, in the absence of a complete investigation, it is impossible to reach any definite conclusion as to the validity of the expenditure. It is also true that extravagance in the use of public funds may exist without any specific expenditure which may be stated to be illegal. In such a situation the remedy is at the polls rather than in an action to recover the amounts expended.

Under the circumstances of the instance you cite, I do not feel that a more categorical answer to your questions may be given.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1917.

REVENUE—COLLECTED BY CONSERVATION COMMISSIONER FROM
RENTALS FOR LEASES IN OR ADJACENT TO STATE RESERVOIR
PARKS—CREDITED TO GENERAL REVENUE FUND OF OHIO.

SYLLABUS:

All revenues collected by the conservation commissioner from rentals for leases of state lands, pipe permits, boat leases, dock leases in state reservoir parks and moneys for special privileges of any nature in or adjacent to such parks, should be deposited in the general revenue fund of the state.

COLUMBUS, OHIO, May 28, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“In reference to the creation of a Conservation Commissioner by amended Senate Bill No. 131 of the 88th General Assembly of Ohio, there has been some doubt expressed as to whether the collections in this new department are to be credited to the General Revenue Fund or to separate Rotary Funds for each park or pleasure resort.

Sec. 478 of amended Senate Bill No. 131, 113 O. L., to be found on page 555 reads as follows:

“The Conservation Commissioner shall collect or cause to be collected, all rentals for leases of state lands, pipe permits, boat licenses, dock licenses, in state reservoir parks and moneys for special privileges of any nature in or adjacent to such parks and shall keep such accounts in separate books to be provided for that purpose, and in transmitting such funds to the State Treasurer he shall accompany them with a separate statement, giving the names of persons from whom and for what purpose such moneys were collected, and to what park or pleasure resort such funds are to be credited, and shall furnish a duplicate statement to the Auditor of State.

Sec. 480 of amended Senate Bill No. 131, 113 O. L. to be found on page 573 reads in part as follows:

‘All moneys derived from such fees shall be credited to the general state fund, * * *’

Your opinion is desired concerning the disposition of collections under the above sections."

Section 477, General Code, provides as follows:

"All revenues derived from the granting of leases of lands, docks, boat landings and other special privileges connected with the state parks or pleasure resorts shall be covered into the treasury of the state to the credit of the general revenue fund."

It is obvious that this section and Section 478, which you quote, contain provisions which appear to be conflicting as to what disposition is to be made of the funds in question, whether they should be deposited in the general revenue fund or in special park or pleasure resort funds. Section 480, the pertinent portion of which you quote, is a repetition of the provision of Section 477, supra.

A consideration of the history of these sections is necessary in determining your question. The provisions of Section 478, General Code, to the effect that the collector of rentals for leases of state lands in or adjacent to state reservoir parks and moneys for special privileges in or adjacent to such parks shall, in transmitting such funds to the State Treasurer, designate the park or pleasure resort funds to which they are to be credited, was first enacted in 1902 as Section 6 of "An Act for the control and management of lakes, reservoirs and state lands, dedicated to the use of the public for park and pleasure resort purposes." 95 O. L. 278. That act provided in Section 4 thereof as follows:

"And be it further enacted that all revenues derived from the granting of special privileges connected with such parks or pleasure resorts as aforesaid, shall be set apart as a special fund, for the purpose of maintaining, improving and policing the same, and such of receipts not more than two thousand dollars during the first year, nor more than one thousand dollars during any subsequent year shall be expended under (the) direction of the joint board provided for in the first section of this act upon warrants drawn by the president of the board of public works, after a majority of the members of each board, (comprising) composing said joint board, have approved the bills or accounts for which such warrants are drawn at any regular or called session of said joint board."

The provisions of Section 6 of the act, which still remain in substantially the same form in Section 478 are consistent with Section 4 thereof, since at that time these revenues from each park or pleasure resort were kept in separate funds and expended as therein provided without any appropriation by the General Assembly being required.

Section 4 of the hereinbefore mentioned act of 1902, Revised Statutes Section 218-318 (now General Code Section 477, supra), was amended in 1906, 98 O. L. 362, 363, to provide as follows:

"And be it further enacted that all revenues derived from the granting of leases of lands, docks, boat landings and other special privileges connected with such parks or pleasure resorts as aforesaid, including the Celina Grand Reservoir in Mercer and Auglaize counties, except rentals from water and oil leases, shall be set apart as a special fund, for the purpose of maintaining, improving and policing the same, and such special fund, including unexpended balances now on hand, shall be expended under the direction of the joint board provided for in section 1 of an act entitled "An act for the control and manage-

ment of lakes, reservoirs and state lands dedicated to the use of the public for park and pleasure resort purposes,' passed April 28, 1902, upon warrants drawn by the president of the board of public works, after a majority of each board, comprising said joint board, has approved the bills or accounts, for which such warrants are drawn, at any regular or called session of said joint board."

This section was again amended in 1911, 102 O. L. 101, 102, as follows:

"All revenues derived from the granting of leases of lands, docks, boat landings, boat license and other special privileges connected with such parks or pleasure resorts, including the Celina Grand Reservoir in Mercer and Auglaize counties, the amount so received for each, from any source shall be set apart as a special fund, for the purpose of maintaining, improving and policing such park, pleasure resort or reservoir, and shall be expended under the direction of such board and engineer, upon warrants drawn by the president of the board of public works, after a majority of such board and engineer has approved the bills or accounts, for which such warrants are drawn, at any regular or called session thereof."

In 1913, Section 477, General Code, as now in force and effect, was amended to read in its present form. It expressly provides that the revenues in question shall be deposited in the general revenue fund. I am advised that since this last amendment of Section 477, notwithstanding the fact that Section 478 contains language which is apparently conflicting, these funds have been deposited in the general revenue fund of the state. In 1915, the then Attorney General rendered an opinion appearing in Opinions of the Attorney General for 1915, Vol. II, p. 1963, which considered the question of whether or not salaries of a patrolman of the public parks of the state could be paid out of special funds for each park from revenues derived from the lease of lands and the sale of special privileges without the necessity of special appropriations by the General Assembly. The then Attorney General recognized that these revenues should be deposited in the general revenue fund and that such salaries could be paid only from the funds made available through specific appropriations for that purpose.

The only change in Section 478, General Code, which was made by the 88th General Assembly, was to the effect that the Conservation Commissioner, instead of the Superintendent of Public Works, shall collect or cause to be collected the revenues therein set forth, and the word "reservoir" was inserted between the words "state" and "parks". The portion of the section relating to the park or pleasure resort funds which are to be credited with these revenues has not been changed. Similarly, the only change which the 88th General Assembly made in Section 480, to which you refer, was to substitute "Conservation Commissioner" for "Superintendent of Public Works". A change in the provisions of the law as to the particular official who shall be charged with the duties of making the collections in question and transmitting the funds to the Treasurer of State obviously has no bearing upon the provisions as to the disposition of such funds, since the provisions as to their disposition have not been changed. It should also be observed that no change has been made as to the requirement that accounts as to this revenue shall be kept in a book provided for that purpose, and neither is there any change as to the requirement that a separate statement should accompany the transmission of these funds to the State Treasurer as provided in Section 478, the only change being as to the official who shall perform these duties. It is obviously contemplated that a record shall be kept showing the income from each state reservoir park.

In view of the express provisions of Section 477, supra, the opinion of the Attorney General rendered in 1915 herein cited, and the administrative practice which has pre-

vailed since that time, I am of the opinion that all revenues collected by the Conservation Commissioner from rentals for leases of state lands, pipe permits, boat licenses, dock licenses in state reservoir parks and moneys for special privileges of any nature in or adjacent to such parks, should be deposited in the general revenue fund of the state.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1918.

APPROVAL, BONDS OF SUMMIT SPECIAL RURAL SCHOOL DISTRICT,
MONROE COUNTY—\$30,000.00.

COLUMBUS, OHIO, May 28, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1919.

APPROVAL, ABSTRACT OF TITLE TO LAND OF CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY IN CITY OF CINCINNATI, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, May 28, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has lately been submitted to me a corrected abstract of title of a certain parcel of real estate situated in the City of Cincinnati, Hamilton County, Ohio, to-wit:

Being a strip of land seventy-six (76) feet in width off of the southeasterly end of lots numbers eight (8), nine (9), ten (10) eleven (11) and twelve (12) of Theophilus French's subdivision in the town of Carthage, now the City of Cincinnati, of record in Plat Book 3, page 51, of the records of Hamilton County, and being part of the same property conveyed by Thomas T. Brown and George S. Brown, to the Cincinnati and Springfield Railway Company by deed dated September 5, 1871, and recorded in Deed Book 402, page 146 of the records in the office of the Recorder of Hamilton County.

An examination of the corrected abstract of title submitted shows that the title of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, which is the owner of record of the above described property, is subject to the following exceptions:

1. It appears from said abstract that on and prior to May 1, 1869, said above described lots, together with lot 7 in said subdivision, were owned and held in fee simple title by said Theophilus French. On said date, to-wit, May 1, 1869, Theophilus French, his wife joining with him in the conveyance, conveyed said lots 7, 8, 9, 10