

## OPINION NO. 73-054

## Syllabus:

1. The Environmental Protection Agency may, at its option, terminate a contract with a private consultant, for preparation of water development plans, according to the terms of the agreement. Where the termination is made pursuant to Part III, Section C., of the contract, the principal consultant is entitled to pro-rata compensation based on services rendered up to that time.

2. In the event that the Environmental Protection Agency cancels the contract, funds appropriated by the General Assembly for the purpose of conducting these studies may be used by the Environmental Protection Agency to perform these same tasks.

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To: Ira L. Whitman, Director, Ohio Environmental Protection Agency,  
Columbus, Ohio  
By: William J. Brown, Attorney General, June 7, 1973

You have requested my opinion on the following questions:

- (1) Can the attached contract be canceled at the option of the Ohio Environmental Protection Agency?
- (2) If the attached contract is canceled,

may the funds appropriated by the Ohio General Assembly for the purpose of conducting these studies be used by the Ohio Environmental Protection Agency to perform these same tasks?

The contracts in question were entered into in 1970 by the Department of Natural Resources pursuant to R.C. 1501.011, 1501.02, 1501.20, Amended House Bill No. 828 of the 108th General Assembly, and Article VIII, Section 2h, of the Ohio Constitution. The contract with the principal consultant is typical of the entire series. The purpose of the contracts was to provide for the preparation of water development plans for various regions of the state. By Senate Bill No. 397 of the 109th General Assembly, effective October 23, 1972, the existing R.C. 1501.20 was repealed and re-enacted as R.C. 6111.41. That Section now reads as follows:

The director of environmental protection shall prepare and maintain a comprehensive plan or plans for the development, use, and protection of water resources, covering all aspects of water management and including regional water development plans. The director of natural resources shall prepare and maintain the elements of such plans relating to recreation, fish, wildlife, flood control, and flood plain management.

The director of environmental protection shall not adopt any comprehensive plan until the director of natural resources approves those portions of the plan relating to recreation, fish, wildlife, flood control, and flood plain management.

In the performance of his functions relating to comprehensive water resource management planning, the director of environmental planning may plan different beneficial uses for different bodies of water and different reaches thereof, and in connection therewith shall give due consideration to the practicability and the physical and economic feasibility of compliance with requirements that would be necessary to attain the water quality to support such uses, and to the equities involved therein.

The director may review water management plans and studies made by, for, or required by law to be submitted to, governmental agencies, and render staff planning assistance to such agencies.

The director may develop, implement, and coordinate a comprehensive plan for water management research by state universities and other public and private institutions.  
(Emphasis added.)

Since Section 4 of Senate Bill No. 397 provides that the Environmental Protection Agency shall succeed to the powers and obligations of the Department of Natural Resources under contracts,

or otherwise, as they relate to these transferred functions, it follows that the Environmental Protection Agency is the proper party to assert the rights of the state under the contracts in question.

The contract with the principal consultant contains the following clauses regarding a termination:

Part II

- D. If the Principal Consultant fails to prosecute the work to insure the completion in accordance with the schedule agreed upon, the State, ten days after giving written notice of its intention to do so, may terminate this agreement and may take possession of the incompleated documents and prosecute them to completion by contract or otherwise.
- E. The State may also terminate this agreement when in its judgment any representative of the Principal Consultant is incompetent or is not rendering satisfactory service.

Part III

- C. The State may at any time after execution of this agreement terminate any portion or all of the work or services. In the event of such termination or termination without cause on the part of the Principal Consultant, the Principal Consultant shall be paid pro rata amount for services rendered up to the time of termination.

Neither Section D. nor Section E. of Part II of the contract would be applicable in the fact pattern you have presented. However, Part III, Section C., as set out above, appears to be in point and dispositive of your question, since a normal reading of the clause would permit the state to terminate, at its own initiative, and without cause, services being performed by the consultant pursuant to the contract. The language of a contract must be given its normal and ordinary meaning, unless such a construction would produce an absurd result or be contrary to the clear intent of the parties. Carroll Weir Funeral Home v. Miller, 2 Ohio St. 2d 189, 192 (1965); McPride v. Prudential Insurance Co., 147 Ohio St. 461, 463 (1947); Coe v. Suburban Light and P. Co., 32 Ohio App. 158 (1929). In the event of such termination, the contract provides that the consultant be paid a pro-rata amount of compensation based on services performed up to that time. In answer then to your first question, I must conclude that the contract in question may be terminated at the option of the Ohio Environmental Protection Agency. Where the conditions do not exist for a termination pursuant to Part II, Section D or E, of the contract, the termination must be made under Part III, Section C, of the agreement, and the consultant is entitled to a pro rata amount of compensation for services rendered up to that time.

Your second question asks whether, in the event that the contract is cancelled, the funds appropriated by the Ohio General

Assembly for the purpose of conducting these studies may be used by the Ohio Environmental Protection Agency to perform these same tasks. As discussed above, R.C. 6111.41 requires the Director of Environmental Protection to "prepare and maintain a comprehensive plan or plans for the development, use, and protection of water resources, covering all aspects of water management and including regional water development." I find no language which would prohibit the Environmental Protection Agency from performing these tasks itself, instead of contracting with independent consultants for the same services. On the contrary, it appears clear that the Agency may hire its own personnel for the purpose of preparing such plans. R.C. 121.14. Consequently, I see no reason why the Agency may not itself use funds, which have already been obligated for this specific statutory purpose.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The Environmental Protection Agency may, at its option, terminate a contract with a private consultant, for preparation of water development plans, according to the terms of the agreement. Where the termination is made pursuant to Part III, Section C., of the contract, the consultant is entitled to pro rata compensation based on services rendered up to that time.

2. In the event that the Environmental Protection Agency cancels the contract, funds appropriated by the General Assembly for the purpose of conducting these studies may be used by the Environmental Protection Agency to perform these same tasks.