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LEASES—STATE LANDS—BUCKEYE LAKE, INDIAN LAKE, LAKE ST. MARYS, GUILFORD LAKE, LAKE LORAMIE, PORTAGE LAKES—EXISTING LEASES IN MATTER OF COMPUTATION OF ANNUAL RENTAL RESERVED THEREUNDER ONLY IN INSTANCES WHERE LESSEE CONSENTS TO NOVATION—SECTION 1541.08 RC—AM. SUB. HB 618, 100 GA, EFFECTIVE NOVEMBER 7, 1953.

## SYLLABUS:

The provisions of Section 1541.08, Revised Code, as amended in Amended Substitute House Bill 618, 100th General Assembly, effective November 7, 1953, are applicable to existing leases in the matter of the computation of the annual rental reserved thereunder only in instances where the lessee consents to a novation for such purpose.

Columbus, Ohio, October 14, 1953

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

Dear Sir:

Your request for my opinion reads as follows:

“The former Division of Conservation and Natural Resources, pursuant to Section 471, General Code, 113 O. L. 551 (553), and the Department of Natural Resources, Division of Parks, pursuant to Section 471, General Code, 123 O. L. 84 (115), leased certain lands in and adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake, Lake Loramie, and Portage Lakes to certain individuals. The lease forms which were

used in leasing these parcels of land were all approved by you or by your predecessors in office. Copies of these lease forms are being enclosed herewith.

“Query: Where the former Division of Conservation and Natural Resources and/or the Department of Natural Resources, Division of Parks, entered into a lease with an individual, pursuant to existing law, which lease provided for a specific rental, can the State of Ohio demand a rental different from that called for in the lease? Does Article II, Section 28, of the Ohio Constitution limit the application of Section 1541.08, Amended Substitute House Bill No. 618, effective November 7, 1953, to ‘new leases’; i.e., to leases entered into after November 7, 1953?”

Amended Substitute House Bill No. 618, 100th General Assembly, effected the repeal, effective November 7, 1953, of existing Section 1541.08, Revised Code, Section 471, General Code, and its reenactment in the following language:

Section 1541.08 (471)

“\* \* \* State lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake, Lake Loramie, or the Portage Lakes \* \* \* may be leased. The division of parks may lease such lands, including marginal strips and marshlands around said lakes, the outer slopes of artificial embankments, islands, borrow pits, and state lands adjacent thereto as it deems proper \* \* \* to responsible parties. Such leases shall be for a term of not less than fifteen years or multiples thereof. The annual rental shall be six percent of the appraised actual value of such lands. Such lands shall be reappraised at the same time and by the same authority as the reappraisal of the real estate of the county is made for tax purposes, and it shall be the duty of the board of tax appeals to furnish to the division of parks the most recent appraised values of the state owned lands described in this section. The division of parks shall pay to the county auditor of the respective counties wherein the state owned lands are located the sum of ten per cent of the proceeds of the annual rentals derived from the leases.

“The leases shall be terminated only with the written consent of both parties to the leases, for violation of state statutes, or for violation of the provisions of the leases and shall not be canceled for the operation of a business licensed heretofore by any other state agency.

“All leases executed in accordance with this section shall be approved by the attorney general and the original copy of the leases shall remain in the possession of the division of parks.

“The provisions of this section shall apply to any leases now in effect in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake, Lake Loramie, or the Portage Lakes.

“Leases which have been executed under the provisions of statutes governing the leasing of canal lands, and which have been continuously renewed upon the dates of expiration, shall be renewed in the same manner as provided in the statutes which governed the execution of the original leases.”

Because of the provision in this act that it “shall apply to any leases now in effect,” it becomes necessary to give consideration to the provisions of Section 28, Article II, Ohio Constitution, which reads as follows:

“The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general law, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this State.”

Quite clearly the application of the provisions of Section 154.08, Revised Code, with respect to the method of computation of the annual rental to be paid by the lessees, raises the question of the possible impairment of the terms of such existing leases within the meaning of the provisions of Section 28, Article II, *supra*. It must be remembered, however, that in any situation of this sort the terms of the statute must be so construed as to harmonize it, if possible, with controlling constitutional provisions. Thus it is said in 37 Ohio Jurisprudence, 624 et seq., Section 344:

“\* \* \* a construction rendering a statute unconstitutional should be avoided, *unless the plain language* of the statute forbids any other construction. Where an act is fairly susceptible of two constructions, one of which will uphold its validity while the other will render it unconstitutional, the one which will sustain the constitutionality of the law should be adopted, even though such construction may not be the most obvious or natural one. \* \* \*”  
(Emphasis added.)

In the instant case I do not regard the language of the statute providing that “The provisions of this section shall apply to any leases now in effect” to be so definite and certain in meaning as not to be susceptible

of more than one construction, and I conclude, therefore, that this language must be construed in such a way as will sustain its validity under the constitution.

I am more strongly impelled to this conclusion by reason of the presumption which obtains that the Legislature, having knowledge of the constitutional provision in question, must be deemed not to have intended to enact an unconstitutional law. For this reason I conclude that it was the legislative intent, by the enactment of the provision above referred to, to make the provisions of amended Section 1541.08, Revised Code, applicable to existing leases to the extent that such could be done without impairing the obligations of any such agreements. From this it follows that it would not be possible to apply the provisions of this section without the consent of the lessee.

It may be pointed out, also, that the state, as lessor, has, by this legislative enactment, consented to the revision of the terms of existing leases as to the method of computation of rentals. Accordingly, in order to give the fullest possible effect to the statutory language here under scrutiny, it becomes necessary to conclude that the provisions of Section 1548.08, Revised Code, may be applied in the recomputation of the annual rental under such leases provided the lessees consent to such revision.

To this extent, therefore, in response to the second specific question in your inquiry, the provisions of Amended Substitute House Bill No. 618 would be applicable to existing leases and not solely to leases executed on or after the effective date of the amendment.

Accordingly, in specific answer to your inquiry, it is my opinion that the provisions of Section 1541.08, Revised Code, as amended in Amended Substitute House Bill 618, 100th General Assembly, effective November 7, 1953, are applicable to existing leases in the matter of the computation of the annual rental reserved thereunder only in instances where the lessee consents to a novation for such purpose.

Respectfully,

C. WILLIAM O'NEILL

Attorney General.