

1632.

APPROVAL, LEASE TO RESERVOIR LAND IN LOGAN COUNTY, OHIO,  
FOR THE RIGHT TO OCCUPY AND USE FOR COTTAGE SITE AND  
DOCKLANDING PURPOSES.

COLUMBUS, OHIO, September 26, 1933.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication over the signature of the chief of the bureau of inland lakes and parks in the conservation division of your department, submitting for my examination and approval a reservoir land lease in triplicate executed by the conservation commissioner to R. T. Leidner of Lima, Ohio. By this lease, which is one for the stated term of fifteen years and which provides for an annual rental of thirty dollars, there is leased and demised to R. T. Leidner the right to occupy and use for cottage site and docklanding purposes only, that portion of the State Reservoir land including Lot No. 26, of the Revised Plat of Minnewauken Island in Indian Lake, as of June 1, 1933, said Island being part of Virginia Military Survey No. 12276, Stokes Township, Logan County, Ohio.

Upon examination of this lease I find that the same has been properly executed by the conservation commissioner and by the lessee above named.

Upon examination of the provisions of this lease and of the conditions and restrictions therein contained I find that the same are in conformity with section 471, General Code, under the authority of which this lease is executed, and with other statutory enactments relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

1633.

PROBATE JUDGE—UPON EFFECTIVE DATE OF HOUSE BILL NO. 108  
SCHEDULE OF FEES SET FORTH IN SECTION 10501-42, GENERAL  
CODE AS AMENDED IN HOUSE BILL NO. 108 SHALL PREVAIL  
FOR REMAINDER OF YEAR 1933.

**SYLLABUS:**

*When House Bill No. 108, passed at the regular session of the 90th General Assembly becomes effective, ninety days after such bill was filed in the office of the secretary of state, the entry made by a probate judge providing for a discount of fees, under authority of section 10501-45, General Code, will be terminated and the probate judge shall charge the schedule of fees set forth in section 10501-42, General Code, as amended in House Bill No. 108, for the remainder of the year 1933.*

COLUMBUS, OHIO, September 27, 1933.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your inquiry of recent date reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Under the provisions of Section 10501-45 of the General Code, a probate judge placed on the journal of the court an order reducing the fees of that court as fixed by Section 10501-42, to the extent of twenty per cent.

At the present session of the General Assembly a bill was passed reducing the fees as now fixed by statute. This bill will not become effective until ninety days after its passage.

Question: When the new law becomes effective, how will it affect the action of the probate judge in reducing fees under the old law to the extent of twenty per cent; and what fees may the probate judge charge after the taking effect of the new law?”

Section 10501-42, General Code, provides in part as follows:

“The fees enumerated in this section shall be charged and collected, if possible, by the probate judge and shall be in full for all services rendered in the respective proceedings.

1. For deposit of will.....	\$1.00
* * * ”	

As you indicate in your communication, the 90th General Assembly in House Bill No. 108, passed June 8, 1933, which bill was approved by the Governor on June 28, 1933, and filed in the office of the Secretary of State on July 1, 1933, amended section 10501-42, General Code. The said bill was entitled “To amend section 10501-42 of the General Code relating to fees that shall be charged and collected by the probate judge.”

Without undertaking to quote the lengthy section as amended, it is sufficient to state here that the only changes made from present section 10501-42, consist of placing less amounts chargeable for probate proceedings opposite some of the various listed proceedings.

Inasmuch as this bill is neither a law providing for a tax levy, a law providing for appropriations for the current expenses of the state government and state institutions, nor an emergency law, it will not go into effect until ninety days after the same was filed in the office of the Secretary of State. See Article II, sections 1c and 1d, Ohio Constitution, and *State vs. Lathrop*, 93 O. S. 79.

Section 10501-45, General Code, provides as follows:

“When the aggregate amount of fees and allowances collected by the probate judge in any calendar year exceeds by more than ten per centum the amount necessary to pay the salaries of said probate judge, deputies, assistants, clerks, bookkeepers and other employes of his office, including court constables, for the same calendar year, such probate judge may by an order entered on his journal, provide for a reduction or discount of all the fees and allowances required to be charged and collected by him for the use of the county by fixing a stated percentage of

discount which shall be applied to all the earnings of said office for the whole of the ensuing year and shall constitute the legal fees of said office for said year."

It is quite evident that the legislature in amending section 10501-42, General Code, did not expressly provide in the same bill amending such section, or any other bill, for the amendment or repeal of section 10501-45, General Code. Said section being in *pari materia* with section 10501-42, must be read harmoniously with the latter section.

Since the legislature did not expressly amend or repeal section 10501-45, General Code, the question arises as to what was the intent of such body in amending section 10501-42, General Code, without changing said section 10501-45, General Code. It is a well known principle of law that the legislature is presumed to know the existing law relating to subjects with which it deals. See Lewis' Sutherland Statutory Construction 2d Ed., Volume II, Section 447, Page 852. See also 55 O. S. 82, 89.

When the legislature passed House Bill No. 108, it knew that the existing law permitted probate judges to charge less fees than those provided for by section 10501-42, General Code. Under the conditions provided for in section 10501-45, General Code, it must have known that some probate judges might have taken action at the end of 1932 to reduce fees chargeable during the ensuing year 1933 by means of journal entries under provisions of section 10501-45, General Code. Having the terms of section 10501-45 in mind, the legislature, as shown by the title of House Bill No. 108, set forth a new schedule of fees "that shall be charged and collected by the probate judges." Hence, it seems clear that the legislature in passing House Bill No. 108 must have intended to nullify any action taken by probate judges to reduce fees under section 10501-45, General Code, for the remainder of the year 1933 after the effective date of the act, and to provide that all probate fees during the remainder of 1933 be according to the schedule set forth in amended section 10501-42, General Code.

The obvious purpose in enacting section 10501-45, General Code, as a part of the new probate code, effective January 1, 1932, was to provide for a lower schedule of fees where more money was received by probate judges than was necessary to pay the overhead of the office of probate judge. The legislature must have had in mind that the fees should produce enough annually to at least cover the overhead of the office of probate judge.

If it were to be held that House Bill No. 108 does not nullify the entry of the probate judge made under section 10501-45, General Code, then the twenty per cent reduction provided in the entry of the probate judge when applied to the new reduced schedule of fees set forth in amended section 10501-42, General Code, might not produce enough moneys to take care of the overhead of the probate judge's office during the year 1933. Surely the legislature could not have intended such a result.

Hence, it appears to me to be reasonable that the legislature by not changing section 10501-45 must have intended to abrogate the entry of any probate judge made under said section for the remainder of the year 1933. However, if the probate judge finds at the end of 1933 that the fees received during 1933 have exceeded more than ten per cent the salaries of the officials of the office, an entry may be made for the ensuing year 1934, under section 10501-45, General Code. This construction will give harmonious effect to section 10501-42, General Code, as amended by House Bill No. 108 and existing section 10501-45, General Code.

I am therefore of the opinion, in specific answer to your question, that when House Bill No. 108, passed at the regular session of the 90th General Assembly becomes effective, ninety days after such bill was filed in the office of the Secretary of State, the entry made by a probate judge providing for a discount of fees, under authority of section 10501-45, General Code, will be terminated and the probate judge shall charge the schedule of fees set forth in section 10501-42, General Code, as amended in House Bill No. 108 for the remainder of the year 1933.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

1634.

MAYSVILLE BRIDGE—PORTION THEREOF, AND UPLAND CONNECTED THEREWITH LOCATED IN OHIO, TAXABLE AS REAL PROPERTY UNDER OHIO LAWS.

*SYLLABUS:*

*That part of the bridge constructed by the Commonwealth of Kentucky across the Ohio River between Maysville, Kentucky, and Aberdeen, Ohio, and the upland connected therewith, which are located in Ohio, are taxable as real property under the laws of this state.*

COLUMBUS, OHIO, September 27, 1933.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—At the request of the county auditor of Brown county, Ohio, you have submitted for my opinion the question as to whether that part of the Maysville bridge which is located in this state is subject to taxation. This bridge which is one extending across the Ohio River from Maysville, Kentucky, to Aberdeen, Brown County, Ohio, was constructed by the Commonwealth of Kentucky a year or more ago pursuant to the authority of an act of Congress; and, I assume, the question here presented relates to the taxation of that part of the bridge structure and the upland connected therewith which is located in the village of Aberdeen, Ohio.

With respect to this question, it may be noted that all real property in this state is subject to taxation except that which is expressly exempted by statutes enacted pursuant to constitutional provisions authorizing such exemption. As to this, Section 5328, General Code, provides that "all real property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom." Section 5322, General Code, is material in the consideration of this question. This section provides as follows:

"The terms 'real property' and 'land' as so used, include not only land itself, whether laid out in town lots or otherwise, with all things contained therein but also, unless otherwise specified, all buildings, structures, improvements and fixtures of whatever kind thereon, and all rights and privileges belonging, or appertaining thereto."