

OPINION NO. 75-093

Syllabus:

Neither the Director of Natural Resources nor any chief of any division of the Department of Natural Resources may enter into any grant, lease or other contract to permit persons to extract minerals from state lands in the custody of the Department of Natural Resources, with the exception of lands specifically set forth in R.C. 1503.05, R.C. 1505.07, and R.C. 1541.081.

To: Robert W. Teater, Director, Dept. of Natural Resources, Columbus, Ohio
By: William J. Brown, Attorney General, December 23, 1975

You have requested my opinion on the following questions:

"1. May the Director of Natural Resources, with the approval of the Governor and the Attorney General, or may any chiefs of divisions of the Department of Natural Resources enter into any grant, lease or other contract to permit persons to extract minerals from state lands in the custody of the Department of Natural Resources in addition to lands

specifically set forth in Sections 1503.05, 1505.07, and 1541.081 of the Revised Code?

"2. If your answer to the first question is yes, may the grant, lease or other contract be in consideration of royalties on the mineral extracted, if the royalty is determined by the Director of Natural Resources to be advantageous to the state?"

In your request, you specifically refer to R.C. 1501.01, which reads in part:

"The director [of natural resources], with the approval of the governor and the attorney general, may sell, lease, or exchange portions of lands or property, real or personal, of any division of the department, or grant easements or licenses for the use thereof. . . ."

You also state in your request that:

"Except for mineral extraction pursuant to Sections 1505.07 and 1541.081 of the Revised Code and except for forest lands, I have refused to consider the granting of mineral rights on any departmental lands, on any basis whatever, in reliance on advice given by your predecessor in Informal Opinion No. 92, Opinions of the Attorney General for 1958. . . ."

Informal Opinion No. 92 (1958) was prepared in response to the following question asked by your predecessor:

"[O]ur specific question is whether or not under the powers granted by Section 1501.01, the Director of this Department has the authority to enter into a lease with the Morton Salt Company providing for the removal of salt beneath the lands owned by the Division of Parks."

The Opinion of my predecessor upon that question is directly on point. I believe this opinion was correct; therefore, it constitutes the basis for the answer to your question.

It was explained in Informal Opinion No. 92 (1958) that R.C. 1501.01 is not sufficiently specific to authorize the Director to enter into a contract with the Morton Salt Company providing for the removal of salt from beneath departmental lands.

Similarly, R.C. 1501.01 is not sufficiently specific to authorize the Director to enter into any grant, lease or other contract to permit persons to extract or remove any minerals from state lands in the custody of the Department of Natural Resources.

It must be kept in mind that public officers and agencies created by statute have only such powers as are expressly granted or necessarily implied. A review of analogous statutes demonstrates that when the legislature intends to authorize

a public officer or agency to dispose of state-owned minerals, it does so in very specific terms.

For example, R.C. 1503.05 authorizes the chief of the division of forestry and preserves to:

"[G]rant easements and leases on portions of the state forest lands under such terms as are advantageous to the state, and he may grant mineral rights on a royalty basis, with the approval of the attorney general and the director." (Emphasis added.)

I also direct your attention to R.C. 1505.07, which provides that the director of natural resources may issue permits and make leases to parties making application:

"[F]or permission to take and remove sand, gravel, stone, gas, oil and other minerals or other substances from and under the bed of Lake Erie, either upon a royalty or rental basis. . . ." (Emphasis added.)

It is significant to note that prior to 1955, the predecessor of R.C. 1505.07 (1507.03) provided that the chief of the division of shore erosion could "issue permits. . .to take and remove sand, gravel, stone, minerals, and other substances from the bottom of Lake Erie. . . ."

In 1953 Op. Att'y Gen. No. 3099 my predecessor concluded that the quoted language was not broad enough to authorize the chief of the division of shore erosion to issue permits for the removal of oil and gas. Thereafter, Section 1507.03 (now 1505.07) was amended to specifically include oil and gas.

Other examples of specific statutory language regarding mineral leases include R.C. 5101.12 and 3313.45, relating respectively to lands controlled by the department of public welfare and by boards of education.

As these other statutory provisions demonstrate that when the legislature has intended to authorize a public officer or agency to dispose of state-owned minerals, it has done so in very specific terms. R.C. 1501.01 contains no such specific grant of authority. Furthermore, an examination of the remainder of Title 15 of the Revised Code discloses no other such specific grant of authority, save those mentioned in your request.

Therefore, it is my opinion, and you are so advised, that neither the Director of Natural Resources nor any chief of any division of the Department of Natural Resources may enter into any grant, lease or other contract to permit persons to extract minerals from state lands in the custody of the Department of Natural Resources, with the exception of lands specifically set forth in R.C. 1503.05, R.C. 1505.07 and R.C. 1541.081.