

tained in the master policy and such other policies as may be issued covering individual risks. It is quite customary to issue blanket policies and their legality has never been questioned. I am of the view, therefore, that such proposed plan as outlined by you would not violate either Section 9563 or Section 9592-10, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6171.

DISCUSSION OF SUBSTITUTE SENATE BILL No. 236, 91ST
GENERAL ASSEMBLY.

COLUMBUS, OHIO, October 13, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you refer to Substitute Senate Bill No. 236, enacted by the 91st General Assembly under date of May 21, 1935, 116 O. L., 244, which confers certain powers upon the Superintendent of Public Works relating to the subaqueous and marginal lands of Lake Erie situated within the territorial confines of the state of Ohio, and in which you request my opinion as to whether under the provisions of this act the Superintendent of Public Works has authority to determine the boundary lines between the subaqueous and shore lands of Lake Erie, the title of which is in the state of Ohio, and the contiguous uplands or other littoral lands owned by persons and corporations, including the municipalities along the lake. In this communication, you likewise request my opinion as to the power and authority of the Superintendent of Public Works to effect leases of subaqueous and other state lands to private persons, corporations and municipalities owning contiguous or adjoining lands.

By the act above referred to, which has been carried into the General Code as Sections 412-24 to 412-33, inclusive, the Superintendent of Public Works is authorized and directed to act as the agent of the state of Ohio for the purpose of cooperating with the Beach Erosion Board of the United States War Department, as provided for under the provisions of Section 2 of the "River and Harbor Act" known as House Resolution No. 11781, adopted by the Congress of the United States and approved July 3, 1930; and by this act the Superintendent of Public Works and engineers under his direction are required to cooperate with the Beach

Erosion Board of the United States War Department in carrying out investigations and studies of present conditions along the main shore lines of Lake Erie and of the bays thereof and of the islands therein within the territorial waters of the state of Ohio, with the view of devising and effecting economical and effective works for preventing and correcting shore erosion and damages resulting from such erosion. The other provisions of this act relate, in the main, to the general purposes of the act as above stated and need not be here set out in any extended way. In this connection, it is noted, however, that Section 5 of the act (Sec. 412-28, G. C.) provides that the Superintendent of Public Works may expend upon erosion and harbor projects along the shores of Lake Erie and its connecting bays such funds as may be appropriated by the General Assembly from time to time for such purposes, and in addition thereto a sum of money equal to the funds derived from the granting of permits as provided for in this section of the act. By this section, the Superintendent of Public Works is authorized to issue permits, subject to the approval of the Governor and the Attorney General, to parties making application therefor, granting to such persons the right to remove sand, gravel, stone, minerals and other substances from the bottom of said lake, either upon a royalty basis or for a fixed annual rental as may be deemed for the best interests of this state; and as to this it is provided that these permits shall be issued for terms of not less than one nor more than ten years and that such sand, gravel, stone, minerals and other substances shall be taken within certain fixed boundaries that do not conflict with the rights of the owners of littoral lands. By Section 6 of this act (Section 412-29, General Code), it is provided that "all laws providing for the control and management of the public works of Ohio by the Superintendent of Public Works are hereby made effective as to the provisions of this act in so far as the same are applicable."

There is nothing in the act of the 91st General Assembly, here under consideration, which in terms authorizes the Superintendent of Public Works to determine boundary lines between lands of the the state of Ohio in Lake Erie and littoral lands contiguous thereto owned by private persons or corporations or by municipal corporations. Neither is there anything in the provisions of his act which authorizes the Superintendent of Public Works to execute leases of lands of the state of Ohio in Lake Erie to such private persons, corporations or municipal corporations, whether they be the owners of contiguous littoral lands or otherwise. The questions presented in your communication are obviously suggested by Section 6 of said act which in terms provides that "all laws providing for the control and management of the public works of Ohio by the Superintendent of Public Works are hereby made effective as to the provisions of this act in so far as the same are applicable." In this con-

nection, it is to be observed that this provision is not that the laws of this state relating to the public works of the state shall apply to the lands and waters of Lake Erie within the territorial confines of the state, or that the Superintendent of Public Works shall have with respect to such Lake Erie lands and waters all the power and authority which he has as to the public works of the state. The provision is that the laws providing for the *control and management* of the public works of the state by the Superintendent of Public Works are made effective *as to the provisions of this act in so far as the same are applicable*. The reference in the language of Section 6 of this act above noted is apparently to Section 412 and other related sections of the General Code providing generally for the control and management of the public works of the state by the Superintendent of Public Works. Section 412, General Code, provides as follows:

“The superintendent of public works shall have the care and control of the public works of the state and shall protect, maintain and keep them in repair. The superintendent shall have the power to remove obstructions therein or thereto and shall make such alterations or changes thereof, and shall construct such feeders, dikes, reservoirs, dams, locks or other works, devices or improvements as he may deem proper in the discharge of his duties. Subject to the approval of the governor, the superintendent of public works may purchase on behalf of the state such real or personal property, rights or privileges as it may be necessary, in his judgment, to acquire in the maintenance of the public works or their improvement subject to the approval of the governor.”

It is quite obvious that the provisions of the section of the General Code above quoted do not in themselves authorize the Superintendent of Public Works to determine boundary lines between property owned by the state as a part of the public works and lands owned by other persons. Neither do the provisions of this section authorize the Superintendent of Public Works to execute leases of lands constituting a part of the public works of the state. The case of *State, ex rel., v. The Cincinnati Central Railway Company*, 37 O. S., 157, 174, is authority for the proposition that the Superintendent of Public Works possesses no powers or authority with respect to the public works of the state except such as are expressly conferred upon him by law, or are necessarily implied for the purpose of effectuating those expressly conferred. In that case the court, having under consideration the provisions of Section 7691, Revised Statutes, which, among other things, provided that the then existing Board

of Public Works "shall have charge of the public works of the state, and shall have power to perfect, render useful, maintain, keep in repair and protect the same," held that the Board of Public Works was not authorized to grant to a railroad corporation the right to lay its tracks and to maintain and operate a railroad along the berme bank of one of the canals of the state. This case was decided by the Supreme Court of this state in 1881. Some years later, to wit, March 28, 1888, the legislature passed an act providing that the commission created by the act should make a survey of the canal lands of the state and providing further that with the consent of persons occupying any of such lands claimed by the state, the commission should determine the boundary line between the property of the state and that of such persons occupying or otherwise possessing any part of the state lands. This act, which is found in 85 O. L., 127, further provided for the lease of canal lands for terms not to exceed fifteen years. These statutory provisions, as they have been later amended by statutory enactments, are now found in Section 13964 and 13965, General Code.

It seems quite clear therefore that the fact that Substitute Senate Bill No. 236, as enacted by the 91st General Assembly, provides that all laws providing for the *control and management* of the public works of Ohio by the Superintendent of Public Works are made effective with respect to this act, which relates primarily to the matter of beach and shore erosion along the shores of Lake Erie within the state of Ohio, does not lend any support to the thought that by reason of this reference to the general powers of the Superintendent of Public Works in the control and management of the public works of Ohio, the Superintendent of Public Works is authorized by this act to determine the boundary lines of the subaqueous and marginal lands of Lake Erie or to execute leases of such lands to other persons, corporations or municipalities.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6172.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYOHOGA
COUNTY, OHIO, \$41,000.00.

COLUMBUS, OHIO, October 13, 1936.

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