

1004

NIMISILA RESERVOIR, SUMMIT COUNTY—DIRECTOR OF PUBLIC WORKS MAY LEASE FOR OPERATION OF SEAPLANE BASE AND LANDING STRIP.

SYLLABUS:

The director of public works may lease the Nimisila Reservoir located in Summit County, Ohio, for the operation of a seaplane base and landing strip.

Columbus, Ohio, September 22, 1949

Hon. S. O. Linzell, Director, Department of Public Works
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“This department is in receipt of an application for the execution of an instrument of lease, granting permission for the operation of a seaplane base or landing strip at Nimisila Reservoir located in Summit County, Ohio.

This Reservoir was constructed under the W.P.A. program and with the appropriation of funds by the General Assembly of Ohio, as follows:

1. In 1935, under House Bill No. 531, appropriated to this department under ‘G-1 Lands’ the sum of \$125,000.00—

For the purchase of necessary land in Nimisila Creek Basin in Franklin Township, Summit County, Ohio, upon which to construct a new storage reservoir to help maintain the water levels in the Portage Lakes and to assure Akron industries a sufficient water supply under contracts entered into with the Department of Public Works of the State of Ohio.

2. In the same year, Amended Senate Bill No. 401 appropriated \$150,000.00 under 'G-1 Lands'—

For the purchase and for the appropriation under the provisions of Section 442 et seq. General Code, of necessary lands, free from or subject to easements thereon, and easements and property rights in the Nimisila Creek Basin, in Green and Franklin Townships, Summit County, Ohio, upon which to construct and establish a dam and a new storage reservoir in substantial conformity with plans and specifications therefor, now on file in the office of the Superintendent of Public Works, and with amendments thereto made by the proper authority, to help maintain the water levels in the Portage Lake and to assure Akron and Barberton industries a sufficient water supply under contracts therefor now and hereafter entered into with the State of Ohio and for other public purposes.

Section 154-40 Sub-Section 9, of the General Code of Ohio, authorizes the Department of Public works to lease unproductive and unused lands or other property under control of the State government, or any department, office or institution thereof, excepting school and ministerial lands.

Would you kindly give this department your formal opinion as to whether or not, under the provisions of the above section, or under any existing statute, this department has the authority to enter into such an instrument for the establishment of a seaplane landing strip."

Section 154-40, General Code, reads in part as follows:

"The department of public works shall have all the powers and perform all the duties vested by law in the superintendent of public works, and the state building commission. Wherever powers are conferred or duties imposed upon such department, offices or officers, such powers and duties shall, except as herein provided, be construed as vested in the department of public works.

In addition to the powers so transferred to it, the department of public works shall have the following powers: * * *

(9) To lease unproductive and unused lands or other property under the control of the state government, or any department, office or institution thereof, excepting school and ministerial lands."

The above language is clear, unambiguous and unequivocal, and therefore requires no interpretation.

From the language of your letter, I understand that the water from Nimisila Reservoir is used to maintain sufficient water levels in the Portage Lakes to insure sufficient water supply to Barberton and Akron industries, which supply is furnished under contract. If for any reason the use of Nimisila Reservoir for a seaplane base or landing strip would infringe upon the rights of the Akron and Barberton industries which they have under contract, then of course common sense dictates that such a lease for seaplane landing could not legally be entered into. However, I presume that the question of any such infringement upon rights now under contract has been considered and that none exists.

I am unable to find any statutory provision of law which inhibits or limits your authority to grant permission for the operation of a seaplane base or landing strip at Nimisila Reservoir for a fair and reasonable consideration and with reasonable restrictions and limitations.

Respectfully,

HERBERT S. DUFFY,
Attorney General.