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APPROVAL—GRANT OF EASEMENT BY W. M. HANEY OF BROOKFIELD TOWNSHIP, TRUMBULL COUNTY, OHIO.

COLUMBUS, OHIO, March 11, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement executed to the State of Ohio by one W. M. Haney of Brookfield Township, Trumbull County, Ohio, conveying to the State of Ohio for the purposes therein stated, a certain tract of land in said township and county. This easement is No. 475.

By the above grant there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instrument, I find that the same has been executed and acknowledged by the respective grantor in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,

Attorney General

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SECTION 6212-20, GENERAL CODE INEFFECTIVE—SUBJECT MATTER REPEALED IN 115 OHIO LAWS, PT. II, 164, PP. 63.

SYLLABUS:

Section 6212-20 *of the General Code is not effective for the reason that there was no subject matter upon which it can operate, said subject matter having been repealed in* 115 *Ohio Laws, Pt. II,* 164, *Section* 63.

COLUMBUS, OHIO, March 11, 1937.

HON. JOHN ALBRIGHT, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion, which reads as follows:

> "May I submit to you the following question for your opinion:
>
> Is Section 6212-20 of the General Code of Ohio effective?
>
> Confusion arises from the fact that Baldwin's Ohio Code Service 1936 has Section 6212-18 to 6212-42 repealed, while the supplement to Baldwin's Ohio Code Service, January, 1936, number, publishes this section as effective January 1, 1936.
>
> This section was repealed, effective December 23, 1933. Resorting to Year Book Vol. 116, page 124, we find this section reenacted as part of the code of appellate procedure. While the title of this act as reported in the Year Book recites 'To amend Section 6212-20', in the act itself Section 6212-20 is reenacted in its entirety. So Baldwin's Ohio Code for 1936 is at war with Baldwin's Ohio Code Service Supplement January 1936 number."

I note that the January, 1936, Supplement to Baldwin's Ohio Code Service, speaking with reference to Section 6212-20 of the General Code, above referred to, has the following quotation pertaining to said section of the Code, to-wit:

> "Note. 116 vs. H. 42 is the 1935 appellate procedure act. See note under Section 12223-1. It purports to amend this section although Section 6212-20 was repealed by 115 vs. Pt. 2,118, Section 62."

It is interesting also to take cognizance of the fact that Supplement 18, 1936, of Page's Ohio Cumulative Code Service, sets out said Section 6212-20 of the General Code and makes the following comment:

> "Comment: This amended section is part of the act simplifying appellate procedure, G. C. Section 12223-1 et seq. The amendment changes the language to conform to the new procedure. This amendment is probably a nullity because the original section was repealed in 115 vs. Pt. II 118 (164), Section 63."

It is apparent that the editors of both said supplements seriously question whether or not said section of the General Code is now effective by reason of the fact that the original section, which is attempted

to be amended in the language above set out, was repealed in 115 O. L., Pt. II 118 (164), Section 63. No doubt said commentators had in mind the general rule that a repealed statute cannot be amended. This rule is set out in 59 C. J., p. 852, Section 423, in the following language, to-wit:

> "In a number of jurisdictions the rule seems to be well settled that a statute which has been repealed in toto cannot be amended. The supposition of the legislature that the statute is still in force as evidenced by the attempted amendment can make no difference; and this rule applies as well where the repeal is implied as where it is express."

However, I do not think that said rule is the law in Ohio but that the proper rule in this jurisdiction in this regard is set out in the following language of Section 424 of the foregoing authority, to-wit:

> "Contrary to the rule stated in the preceding section that a statute which has been repealed in toto cannot be amended, it is held in many juridictions that a statute which purports to amend a statute which has been repealed in toto is valid where the provisions of the new statute are independent and complete in themselves and stand like independent enactments. This rule applies as well where the repeal is by implication as where it is express. All that is necessary to render such an amendment valid is that it expresses the legislative purpose intelligibly and provides fully upon the subject considered. It will then be considered as the latest expression of the legislative will, although there was in fact nothing which could be amended, and the reference to the statute amended may be treated as surplusage."

In order to properly attack the question presented in your letter, it is necessary to consider the history of the enactment of this and related sections of the General Code.

A reference to said history develops the fact that said statute was originally enacted as set out in 108 O. L., Pt. 2, 1182 (1184), being one of nine sections having to do with the definition of crimes, and the method of enforcement and jurisdiction of courts in connection with the Ohio Prohibition Law. In 109 O. L., 144, Section 6212-18 of the General Code was amended. At the same session of the legislature Sections 6212-40, 6212-41 and 6212-42 were enacted, as well as Sections 6212-21 to 6212-39, inclusive. In 110 O. L., 75, Section 6212-33

was amended; in 111 O. L., 83, Section 6212-37 was amended; in 112 O. L., 260, Section 6212-19 was amended; and in 114 O. L., 479, is the enactment of Sections 6212-18 and 6212-39, having reference to the matter of the jurisdiction of courts in said case.

In 115 O. L., Pt. II, 164, Section 63, all the foregoing sections and their amendments were repealed, the reference to the repeal of Section 6212-20 being included in the list of repeals described in this language—"6212-18 to 6212-42, both inclusive." The present Section 6212-20, as set forth in the two supplements heretofore referred to appears in 116 O. L., 104 (124).

The case of *State* vs. *Brewster,* 39 O. S., 653, is given as the authority in Corpus Juris as substantiating the proposition that Ohio is one of the jurisdictions which takes the position that a statute, which purports to amend a statute which has been repealed in toto, is valid where the provisions of the new statute are independent and complete in themselves and stand like independent enactments. The first paragraph of the syllabus of the above styled case reads as follows:

> "Where a section of the Revised Statutes is repealed and re-enacted in a changed form, a subsequent statute which, in terms, again repeals and reenacts the original section in still another form, is, as a general rule, to be regarded as a repeal of the section in its amended form, and the section in its last form will take its place in the revision as part of the Revised Statutes."

I do not think it can be successfully argued but that the section in question falls within this category.

Section 16, Article II, of the Ohio Constitution, relative to amendments of legislative enactments, provides in part as follows:

> "No law shall be * * * amended unless the new act contains * * * the section or sections amended, and the section or sections so amended shall be repealed."

See also the case of *State ex rel. Godfrey* vs. *O'Brien, Treas., et al.,* 95 O. S., 166. 37 O. J., p. 379, Section 109.

It is to be further noted, as set out 37 O. J., p. 426, Section 172:

> "An amended statute not only becomes a part of the chapter and subdivision of the Code in which it is placed (56 O. S. 531) but also takes the place therein of the section which it repeals (39 O. S., 653, approved in memo. opinion in 75 O. S. 609). 37 O. Jur. p. 426, Section 172."

However, it would seem that our difficulty in the instant case is due to the fact that all of the sections of the Code that were repealed are sections having to do with the new extinct Crabbe Act. The language of Section 6212-20 reads in part as follows:

> "An appeal shall not be filed in any court to reverse a conviction for a violation of this act." * * *

It is apparent that the words "this act" have reference to the general provisions of law listed in the Code immediately before and immediately after Section 6212-20, having to do with the Prohibition Law of Ohio now repealed. In this connection it is interesting to note the language of 37 O. Jur., 426, Section 175, wherein it is said:

> "A particular section or provision may be inoperative because the statute involving the subject matter to which it relates has been repealed."

The foregoing authority cites *State ex rel. Cuney* vs. *Wyandot County,* 16 O. C. C., 218, affirmed without opinion in 37 O. S., 661.

Part of the language of the court in the above case, considered in the light of the facts of our instant case, is peculiarly applicable. On pages 221, 222, of said case, the court reasons in the following words, to-wit:

> "Hence, without the principal section, the supplement would be of no force or effect. Its purposes could not be accomplished. Its life and operation are both derived from the main section, and if that falls, the supplement falls.
>
> To further illustrate our meaning, let us suppose that the legislature, on the 17th day of April, 1896, instead of *amending* Section 917 (as it did), had simply passed an act repealing Section 917. What then would become of the supplement of May 21, 1894? On what did it rest for support and operation? It would have no subject matter upon which to take hold, for we have seen that it does not require the commissioners to make any report. There would be no commissioners' report to publish in any form.
>
> The supplement would die with the principal section, as wholly useless and inoperative."

In the light of the fact that all of the other sections of the prohibition law heretofore referred to have been repealed and are no longer

the law of this state, and inasmuch as Section 6212-20 has to do with legal procedure on appeal in connection with said law, it is my opinion that said Section 6212-20 of the General Code is no longer effective, not for the reasons assigned by the commentators in Baldwin's and Page's Supplements, heretofore referred to, but for the reason that said Section 6212-20 of the General Code involves subject matter to which it relates which has been repealed. In other words, there is no subject matter upon which this statute can operate and said statute is a vain and useless thing under the circumstances and for that reason ineffective.

Respectfully,
HERBERT S. DUFFY,
Attorney General

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APPROVAL—BONDS OF CITY OF BARBERTON, SUMMIT COUNTY, OHIO, $15,000.00.

COLUMBUS, OHIO, March 11, 1937.

State Employes Retirement Board, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of City of Barberton, Summit County, Ohio, $15,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of water works bonds in the aggregate amount of $762,394.20, dated January 1, 1924, bearing interest at the rate of 5% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,
HERBERT S. DUFFY,
Attorney General