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MOSQUITO CREEK RESERVOIR—STATE, THROUGH DIVISION OF CONSERVATION AND NATURAL RESOURCES OF DEPARTMENT OF AGRICULTURE HAS AUTHORITY TO ACCEPT A GRANT FROM FEDERAL GOVERNMENT OF RIGHT TO USE RESERVOIR AND GROUNDS CONSTITUTING SHORE LINE—PARK AND RECREATION PURPOSES—STATE DEPARTMENT OF HEALTH—AUTHORITY TO REGULATE AS TO PURITY OF WATER AND USE OF WATER TO SUPPLY WATER SYSTEM, WARREN.

## SYLLABUS:

The State of Ohio, through the Division of Conservation and Natural Resources of the Department of Agriculture, has authority to accept in behalf of the State of Ohio a grant from the Federal government of the right to use Mosquito Creek Reservoir and the grounds constituting its shore line for park and recreation purposes and the State Department of Health will have full authority to adopt and enforce such regulations as will preserve the purity of the water of the reservoir and conserve the public health, including the use of the waters thereof as a supply to the water system of the City of Warren.

Columbus, Ohio, March 23, 1946

Honorable Frank L. Raschig, Director, Department of Public Works  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“In 1943 the Federal Government completed Mosquito Creek Reservoir near Warren, Ohio, to furnish vitally needed water for steel production and to protect the steel plants from floods. A further justification for this project was the use of water from the reservoir for a domestic water supply for the City of Warren. The present water supply of Warren from the Mahoning River has been declared unsatisfactory by the Ohio Department of Health.

The City of Warren is conducting negotiations with the Federal Government in order to obtain a long-time contract for the use of water from Mosquito Creek Reservoir. This contract entails a considerable expenditure for this privilege by Warren and a large immediate expenditure by Warren for constructing a pipe line from the Reservoir to Warren.

Before entering into this contract or proceeding with construction of the pipe line the City of Warren wishes some assurance that the shore line of the reservoir will be developed in a manner in keeping with State Health Department standards in order to preserve the purity of its water supply.

Apparently under December 22, 1944 Flood Control Act, Public Law 534-78th Congress, Chapter 665-2nd Session, H. R. 4485, the Chief of Engineers, U. S. Army, has the authority to develop or lease the shore line of flood-control reservoirs for recreational use. This is in accord with Section 4 of the above act which is quoted herewith:

'Sec. 4. The Chief of Engineers, under supervision of the Secretary of War, is authorized to construct, maintain and operate public park and recreational facilities in reservoir areas under the control of the War Department, and to permit the construction, maintenance and operation of such facilities. The Secretary of War is authorized to grant leases of lands, including structure or facilities thereon, in reservoir areas for such periods and upon such terms as he may deem reasonable: *Provided*, That preference shall be given to Federal, State, or local governmental agencies, and licenses may be granted without monetary consideration, to such agencies for the use of areas suitable for public park and recreational purposes, when the Secretary of War determines such action to be in the public interest. The water areas shall be open to public use generally, without charge, for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such water areas along the shores of such reservoirs shall be maintained for general public use, when such use is determined by the Secretary of War not to be contrary to the public interest, all under such rules and regulations as the Secretary of War may deem necessary. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts.'

You will note from the above act that the State of Ohio has an opportunity to obtain the area surrounding the reservoir by lease or license or to accept it without charge from the Federal Government.

Will you advise if, in the absence of specific legislative authority, the Department of Public Works or other state agency has the authority to accept the jurisdiction of the property as a state recreational park without charge or to obtain it by lease

with the payment of one dollar for eventual development as a recreational area.

If the State of Ohio obtains jurisdiction of the shore line of Mosquito Creek Reservoir it will be developed for recreation in accordance with State Health Department regulations for maintaining a sanitary water supply for the City of Warren. The area should furnish much needed recreational facilities for north-eastern Ohio.

What is done in regard to Mosquito Creek reservoir will undoubtedly serve as a precedent for existing Berlin Reservoir and for Delaware and Dillon Reservoirs soon to be built and Eagle Creek Reservoir, which is authorized."

I note that the dual purpose of the plan suggested in your communication is to furnish the City of Warren with a water supply from the Mosquito Creek Reservoir and to obtain for the state the jurisdiction of the shore line and the adjacent land in the reservoir area for purposes of public recreation. Involved in the plan also is the cooperation of the State Department of Health for the purpose of preventing pollution and insuring, so far as possible, the purity of the water for the City of Warren.

I note also your statement that if these purposes can be accomplished in regard to Mosquito Creek Reservoir they will serve as a precedent for similar arrangements with respect to other reservoirs which are in contemplation in different parts of the state.

In conference, it has been suggested that the Ohio Water Resources Board might be the appropriate authority to negotiate for and receive for its supervision the concession which I understand the Federal Government is willing to make. I find, however, upon examination of Section 408, General Code, and the following sections relating to the organization and purposes of the Ohio Water Resources Board, that it appears to be rather definitely limited to conservation of the natural waters of the state with reference to their use in agricultural, industrial, commercial and domestic pursuits. I do not find anything in the statutes relative to this board which seems to contemplate the control of the water resources of the state for the purpose of public recreation.

In Section 469 et seq., General Code, provision is made for the organization of the Board of Park Commissioners who are given specific

jurisdiction of certain bodies of water which are to be used and developed as a part of a state system of public parks. These bodies of water included within the jurisdiction of this board are limited to Buckeye Lake, Indian Lake, Lake St. Marys, The Portage Lakes, and Lake Loramie. By subsequent special acts, the general assembly also included Guilford Lake and Pymatuning Reservoir in the list of bodies of water placed under the control of the board of park commissioners.

By an Act passed by the general assembly effective June 28, 1939, found in 118 O. L., 83, the Division of Conservation and Natural Resources was created within the Department of Agriculture. That act, with some amendments and additions, is codified as Sections 1435-1 to 1454, inclusive, General Code. This body, by the terms of Section 1438-4, General Code, was made the successor of what was previously designated as the Conservation Council. Section 1438-2f, General Code, describes the general powers of this commission in part, as follows:

“The commission shall have and take the general care, protection and supervision of the state parks known as Lake St. Marys or Grand Lake, Portage lakes, Lake Loramie, Indian lake, Buckeye lake, Guilford lake, such part of the Pymatuning reservoir as lies in Ohio *and all other state parks and lands owned by the state or in which it is interested or may acquire or become interested*, except lands and lakes, the care and supervision of which are vested in some other officer, body, board, association or organization.” (Emphasis added.)

By the further provision of the same section, the general assembly has conferred upon this commission rather broad and somewhat specific powers, including, as will be noted, the authority to enter into contracts and agreements with other states, and the United States. The portion of Section 1438-2f in question, reads as follows:

“The commission is hereby *authorized to enter into contracts and agreements* with persons, other departments and subdivisions of this state and with other states and *the United States* for the accomplishment of the purposes for which it is created, and *shall cooperate with* and shall not infringe upon the rights of *other state departments*, political subdivisions, and other public officials and public and private agencies in the conduct of conservation plans and other matters in which the interests of the commission and such other departments and agencies overlap.” (Emphasis added.)

By way of further description of the powers of the old conservation council, it is provided in Section 472, General Code, as follows:

“All lands and waters now or hereafter dedicated and set apart for public park or pleasure resort purposes, *or which may hereafter be acquired for such purposes*, shall be under the control and management of the conservation council, who shall protect, maintain and keep them in repair. The conservation council shall have the following powers over all such lands and waters, to-wit: To make alterations and improvements thereof, to construct and maintain dikes, wharves, landings, docks, dams and other works, and to construct and maintain such roads and drives in, around, upon and to such lands and waters as shall make them conveniently accessible and useful to the public. And said conservation council may, subject to the approval of the attorney general, acquire by gift, purchase or by appropriation proceedings, on behalf of the state, such real and personal property, rights and privileges as may be necessary in its judgment for the use, extension, enlargement and maintenance of such public parks and resorts, and for new public parks, resorts, reservoirs, channels, drives, roadways, docks, dams, landings, wharves and other improvements.” (Emphasis added.)

Section 479 of the General Code sets out specifically a series of rules whereby the council is to be governed and whereby its authority in conservation of these park areas is elaborated. As a part of the same section, and as Rule 89 therein set forth, we find the State Department of Health brought into the picture and charged with certain duties. Rule 89 reads as follows:

“The territory included within any state park or pleasure resort and surrounding lands extending back one mile therefrom, is hereby designated a special sanitary district, to be under the control and management of the state board of health for sanitary purposes, and any failure to comply with the notices of said department relating to sanitary conditions, shall be deemed a violation of the terms of this act.”

These powers and duties of the State Board of Health are further specified in Rule 90, which reads as follows:

“The state board of health shall have power to make and enforce rules and regulations relating to the location, construction and repair of stockyards, hogpens, stables, privies, cesspools, sinks, plumbing, drains and all other places where offensive substances or liquids may accumulate within such sanitary district

and said board of health shall have power to abate all such nuisances, and may remove or correct all unsanitary conditions detrimental to the health and wellbeing of the community included in such sanitary district, and may, when necessary, certify the costs and expenses thereof to the county auditor, to be assessed against the property of the offending party, and thereby made a lien upon it and collected as other taxes."

The above provisions of law appear to me to point the way very clearly to the accomplishment of all of the purposes suggested in your letter. The Federal authorities, acting in accordance with the provisions of law quoted in your communication, appear not only fully authorized to make the proposed grants to the City of Warren and to the State of Ohio, but by the terms of the Federal Act are required to give preference to state or local governments in grants of reservoir areas for public park and recreational purposes, and such grants may be made without monetary consideration. The proper instruments will, of course, have to be prepared, making such grants to the City of Warren on terms agreed to by it and to the State of Ohio in accordance with the provisions of the Federal law and in accordance with the purposes set out in your letter.

Accordingly, and in specific answer to your inquiry, it is my opinion that the State of Ohio, through the Division of Conservation and Natural Resources of the Department of Agriculture, has authority to accept in behalf of the State of Ohio a grant from the Federal government of the right to use Mosquito Creek Reservoir and the grounds constituting its shore line for park and recreation purposes and that the State Department of Health will have full authority to adopt and enforce such regulations as will preserve the purity of the water of the reservoir and conserve the public health, including the use of the waters thereof as a supply to the water system of the City of Warren.

Respectfully,

HUGH S. JENKINS,  
Attorney General