

that the same has been properly executed and approved and that there are shown by the provisions thereof sufficient balances in the appropriation account to pay the purchase price of said property, which is the sum of \$31,079.00.

I am herewith forwarding to you said abstract of title with my approval, subject to the exceptions above noted, and likewise the warranty deed of The Van Sickle Realty Company by which this property is to be conveyed to the State of Ohio, and Encumbrance Estimate No. 631, both of which are hereby approved.

I do not have in my possession the deed of a special warranty above referred to by which Irene B. Ross is to convey her estate and interest in this property to The Van Sickle Realty Company. This deed should, of course, be delivered to The Van Sickle Realty Company before the warranty deed of The Van Sickle Realty Company is delivered to the State of Ohio. In this connection the suggestion is made that when said deeds are filed for record, the deed of Irene B. Ross to The Van Sickle Realty Company should be first filed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2341.

APPROPRIATION—KIRKERSVILLE FEEDER TO BUCKEYE LAKE—INTENT OF LEGISLATURE—ASCERTAINMENT OF—REASONABLE INTERPRETATION OF LAW IN SPECIFIC INSTANCE NECESSARY

SYLLABUS:

Appropriation for dredging the Kirkersville feeder at Buckeye Lake discussed.

COLUMBUS, OHIO, September 15, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“The 88th General Assembly, through House Bill No. 513, appropriated to the Department of Public Works the following: ‘For the dredging of the Kirkersville Feeder at Buckeye Lake; all sand and mud removed by the dredge to be deposited on the east side of the Feeder; subject to release by the Controlling Board’—\$25,000.00.

This department has made a complete survey of the Feeder from the National Highway at Kirkersville to Buckeye Lake near Millersport and find that the Feeder should be cleaned out from Station 63 as shown on the enclosed map, which station is at what is known as Bloody Run waste weir and should be carried to the vicinity of Station 334 at Buckeye Lake.

The appropriation reads in part: ‘For the dredging of the Kirkersville Feeder at Buckeye Lake.’ This wording limits the extent of the proposed work to one particular area at its mouth and not to its length.

An opinion is requested therefore, as to whether or not the phrase ‘at Buckeye Lake’ will limit the extent to which the Feeder may be cleaned.

The appropriation further reads in part ‘all sand and mud removed by the dredge to be placed on the east side of the Feeder.’

It is seen, on the map, that the Feeder does not at all time run in a northerly and southerly direction and it is these instances when the east and

west sides become the north and south sides, that we are at a loss to know on which side to place the mud and sand and still be in keeping with the wording of the appropriation.

Our survey also shows that along some sections of the Feeder it will be necessary to place excavated material not only on the east side, but also on the west side in order to waste excavated material and also to strengthen and to build banks.

We request, therefore, an opinion as to whether the clause 'all sand and mud removed by the dredge to be placed on the east side of the Feeder,' necessarily limits the depositing of excavated material only on the east side and if so, which is to be taken as the east side when the Feeder is running in an easterly and westerly direction."

Section 22 of Article II of the Ohio Constitution provides that no money shall be drawn from the state treasury except in pursuance of a specific appropriation made by law. It therefore follows that conditions attached to an appropriation measure must be considered in order to arrive at the legislative intent. The courts of this state have decided that an appropriation may be specific within the meaning of the Constitution without setting forth detailed itemization. See *Long et al. vs. Board of Trustees of Ohio State University et al.*, 24 Ohio App. 261; also *State ex rel. vs. Griswold et al.*, decided by the Court of Appeals of Franklin County on January 28, 1930, reported in 35 Ohio App. at page 354, (Ohio Bar, September 9, 1930).

However, it is also well settled that when detailed itemizations or conditions are attached to an appropriation measure, the same must be followed in so far as they are consistent with the objects intended to be accomplished by the measure.

An appropriation act is a law the same as any other legislative enactment and the same rules of construction are applicable thereto. It will, therefore, be necessary to determine the intent of the legislature in view of all of the language used in connection with the facts and circumstances surrounding the same.

In the general reference to the Kirkersville Feeder at Buckeye Lake, it is believed that the legislature had in mind the description of the Feeder upon which the money was to be expended and did not intend to limit the expenditure to some definite portion thereof, although the language is susceptible of the construction that the improvement is to be made in the vicinity of Buckeye Lake. In either view which is adopted, I have no difficulty in arriving at the conclusion that the portion of the Feeder which you contemplate dredging comes within the purpose of the appropriation bill. This would seem to be the only reasonable construction, for the reason that it would be utterly absurd to say that the money could be used for dredging the feeder a small distance from the lake when as a matter of fact from a practical standpoint a greater distance would be necessary.

The second question you present with reference to which is to be regarded as the east side of the feeder in view of the language of the appropriation bill and the facts is not so easily determined.

In examining the general course of the Kirkersville Feeder as indicated on the map submitted, there is no difficulty in arriving at the conclusion that the left side of the feeder, to one traveling from its source toward Buckeye Lake, is to be regarded as the east side generally speaking. In tracing said course from the lake to its source it will be observed that generally it takes a northerly direction which is inclined several degrees to the west. It will further be apparent that there is little difficulty in determining which is the eastern side of said feeder so long as the westerly inclination is less than ninety degrees. Of course, when the direction is due west, there would be no east or west side. However, as soon as the westerly course is inclined in a southerly direction, then, of course, what theretofore had been the east side will become the west side technically speaking.

In examining the map submitted, it will be observed that only a very small portion of said feeder at any part can be said to be taking a due westerly course. As stated in your communication, there is a portion which it is contemplated to be dredged which runs in a northeasterly and southwesterly direction. As hereinbefore indicated, so far as that particular portion is concerned it could be properly stated that the right hand side of the feeder, to one traveling from the source to the lake, would become the easterly side. However, the general direction of the entire feeder would indicate that the legislature intended that the left hand side, to one traveling from its source to the lake, is to be regarded as the eastern side.

In view of the foregoing it may well be argued that all of the sand and mud dredged from the feeder should be placed upon the same side of the stream, which is to be regarded as east in view of the general direction. It is believed that this conclusion could well be sustained as being the intent of the legislature. On the other hand, in view of the fact that there are portions of said feeder contemplated to be dredged, which, technically speaking, are exceptions to the general rule, and, in so far as these exceptions exist, it could properly be contended that the sand and mud could be placed upon the opposite side.

As to those portions of the stream where both banks need strengthening, there would seem to be no question as to your authority to incidentally place some material on the west, as well as on the east, side. In other words, the purpose of this appropriation is to make the feeder useful for the purposes for which it was constructed; to dredge it in a manner that would weaken one of its banks and probably destroy its usefulness to the damage of the adjoining land owners, would be a ridiculous interpretation. Therefore, in so far as it becomes necessary to the preservation of the feeder in connection with its dredging to strengthen one of the banks by the use of the material taken therefrom, it is believed that by implication such power exists.

The same reasoning may be applied to those instances wherein in order successfully to dispose of waste material it becomes necessary to utilize both sides of the feeder. In arriving at the legislative intent in a given enactment, the purpose to be accomplished by such enactment should be taken into consideration. As hereinbefore indicated, undoubtedly the purpose of this appropriation is to make the feeder in question useful for the purpose of supplying Buckeye Lake with the necessary water to maintain the lake level. The requirement that the sand and mud shall be placed on the east side of the stream is general in its terms and it is believed that a technical construction with reference to this matter is neither justified nor required in view of the conflicting facts presented, but that a reasonable interpretation of the act as a whole is all that is required.

In view of the foregoing, it is believed that a more specific answer to your inquiry is unnecessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2342.

APPROVAL, BONDS OF MEIGS COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, September 15, 1930.

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