

**OPINION NO. 70-133****Syllabus:**

The Ohio Historical Society is not possessed of power or authority to call for bids for the sale of standing timber from state-owned lands under its custodial care.

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**To: Roger Cloud, Auditor of State, Columbus, Ohio**  
**By: Paul W. Brown, Attorney General, September 18, 1970**

Your request for my opinion concerns the harvesting of mature timber on state-owned historical sites under the jurisdiction of The Ohio Historical Society, and is as follows:

"(1) [D]oes the Ohio Historical Society have the authority to call for bids for the sale of such timber?"

"(2) [S]hould the income from the sale of such timber be deposited into the General Revenue Fund of the State, or may the income be retained by the Historical Society for use in maintaining and improving any historical site administered by the Society?"

"(3) [I]f the Society is authorized to retain and expend such funds, must such expenditure be for the specific purpose of maintaining and improving the sites only from which the timber was cut?"

Standing timber is real property unless converted to person-

alty by contract. In Hirth v. Graham, 50 Ohio St. 57 (1893), it is stated:

"A sale of standing timber, whether or not the parties contemplate its immediate severance and removal by the vendee, is a contract concerning an interest in lands, within the meaning of the statute of frauds, and is voidable by either party if not in writing."

The owner of the subject standing timber is the State of Ohio. Nowhere have I been able to find authority in law for the sale of standing timber from state-owned lands except in Section 1503.05, Revised Code. The lands described in such section are known as state forest lands. The above provisions do not include other state-owned lands, such as historical sites. On historical sites, the timber itself may be of as great historical importance as the improvements made by man, and the general assembly has not provided for the removal of either without its permission.

Section 149.30 (O), Revised Code, reads in part:

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"The society shall not sell, mortgage, transfer or dispose of historical sites to which it has title and in which the state has monetary interest except by action of the general assembly."

I must imply from the foregoing that the legislature has not given its permission for the Historical Society to bargain away any part of the real estate under its custodial jurisdiction in which the State of Ohio has a monetary interest. It naturally follows that a sale of standing timber to convert it into personal property is a sale of an interest in land. Hirth v. Graham, supra.

Section 149.30, Revised Code, provides for state funds to be made available to the Historical Society and pertinent parts thereof are as follows:

"The general assembly may appropriate money to the Ohio historical society each biennium to carry out the public functions of the society as enumerated in this section. An appropriation by the general assembly to the society constitutes an offer to contract with the society to carry out those public functions for which appropriations are made. An acceptance by the society of the appropriated funds constitutes an acceptance by the society of the offer and is deemed an agreement by the society to perform those functions in ac-

cordance with the terms of the appropriation and the law and to expend the funds only for the purposes for which appropriated. \* \* \*

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"The society shall faithfully expend and apply all moneys received from the state to the uses and purposes directed by law and for necessary administrative expenses. \* \* \*" (Emphasis added.)

The general assembly expresses its intention that all state moneys provided for the Society shall be expended strictly pursuant to the purposes of the appropriation or grant.

Your first question being answered in the negative renders the second and third questions moot.

From the foregoing, therefore, it is my opinion and you are advised that The Ohio Historical Society is not possessed of power or authority to call for bids for the sale of standing timber from state-owned lands under its custodial care.