

**OPINION NO. 80-005****Syllabus:**

1. R.C. 1541.081 operates as an exception to R.C. 1501.01, and as such, the Director of the Department of Natural Resources may not sell lake lands pursuant to his general authority to dispose of state lands under the Department's jurisdiction.
2. The Chief of the Division of Parks and Recreation of the Department of Natural Resources is the agent of the state for the sale of lake lands, and any sale of such lands must be effectuated in conformity with R.C. 1541.081.
3. The Lake Lands Administrator has no authority to sell lake lands where there is no dispute or question as to title thereto and ownership thereof.

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**To: William W. Wilkins, Director, Ohio Department of Administrative Services,  
Columbus, Ohio**

**By: William J. Brown, Attorney General, February 13, 1980**

I have before me your request for my opinion in which you pose the following questions regarding the proposed sale of Duck and Gobel Islands at Buckeye Lake:

1. May the Director of the Department of Natural Resources delegate to the Lake Lands Administrator his statutory authority to sell, lease, or otherwise dispose of interest in real property belonging to the State of Ohio?
2. If the answer to the first question is in the affirmative, is the Lake Lands Administrator, while acting as the agent of the Director of the Department of Natural Resources, subject to the statutory restrictions imposed on the Department of Natural Resources in the sale of various interests in real property, such as appraisal, bidding requirements, minimum down payments, execution of the necessary instruments, and other conditions of sale? If the annual value of such contracted service is in excess of \$10,000.00 is such contract subject to Controlling Board approval?

3. If the answer to the first question is in the affirmative, are proceeds from a sale of state real property by the Lake Lands Administrator, while acting as the agent of the Director of the Department of Natural Resources, to be accounted for and applied in the same manner as if the sale was by the Director of the Department of Natural Resources, or may they be applied to the operation of the office of the Lake Lands Administrator?
4. If the answer to the first question is in the negative, may the Lake Lands Administrator on his own authority sell, lease, or otherwise dispose of interest in real property belonging to the State of Ohio, other than "disputed Lake Lands", as set forth in Chapter 5315, Ohio Revised Code?

Inasmuch as your questions relate to the sale of lands in Buckeye Lake, I will confine my discussion specifically to the power and authority to sell state lake lands. For the purposes of this opinion, 'lake lands' means those bodies of water and lands described in R.C. 1541.06.

You first inquire whether the Director of the Department of Natural Resources ("Director") may delegate his statutory authority to dispose of real property to the Lake Lands Administrator. Pursuant to R.C. 1501.01, the Director, "with the approval of the governor and the attorney general, may sell, lease, or exchange portions of lands or property, real or personal, of any division of the department, . . . when such sale, lease, exchange. . . is advantageous to the state." The resolution of your question whether this authority may be delegated to the Lake Lands Administrator depends, in the first instance, upon a determination of whether the Director's power to sell state lake lands is curtailed by R.C. 1541.081.

R.C. 1541.081 designates the Chief of the Division of Parks and Recreation of the Department of Natural Resources "as the agent of the state" in selling state lake lands which are not used or needed for public purposes. Unlike R.C. 1501.01, which gives the Director the power to sell any lands with the sole limitation that the approval of the governor and attorney general be secured, R.C. 1541.081 sets out specific procedural guidelines for the sale of lake lands. The Chief of the Division of Parks and Recreation is "directed" to survey and determine, with the approval of the Director and the Recreation and Resources Commission, the possible future needs of such lands for public use, and must consult with other agencies or subdivisions in making this determination. R.C. 1541.081(A). The Chief of the Division must secure an appraisal of the market value of the land, and may also contract for the services of competent real estate appraisers for this purpose. R.C. 1541.081(B). Thereafter, and upon the order of the Director, the land may be sold by advertisement for public auction at not less than the appraised value, with the exception that a lessee in possession who has made improvements must be afforded first option to purchase at 110% of the appraised value. R.C. 1541.081(B)(1)-(2). The Chief of the Division of Parks and Recreation is also authorized, pursuant to R.C. 1541.081, to employ any personnel "he deems necessary" to accomplish the sale, and to prepare or cause to be prepared, certify, and record plats of the area. All money derived from such sales "shall be paid to the treasury of the state to credit of the state park special account and shall be expended in conformity with the provisions of section 1541.22 of the Revised Code."

R.C. 1501.01 authorizes the Director to sell land of any division with no procedural steps outlined. Further, there is no necessity under R.C. 1501.01 for the Director to first find that the land is not needed for present or future public use. R.C. 1541.081, on the other hand, designates the Chief of the Division of Parks and Recreation as the agent of the state specifically for the sale of lake lands, and enumerates the steps to effectuate such a sale. Hence, the question is whether R.C. 1541.081 carves out an exception to the Director's power to sell lands if the property to be sold is lake lands. For the following reasons, it is my opinion that R.C. 1541.081 makes the Chief of the Division of Parks and Recreation the exclusive authority to sell, with the Director's approval, state lake lands.

R.C. 151 is the legislative codification of the principle that special legislation takes precedence over general provisions. That section states:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

R.C. 1501.01 is a general provision relating to the Director's power to sell any land under the jurisdiction of the Department of Natural Resources. In contrast, R.C. 1541.081 is the statute specifically delineating the manner in which the state lake lands may be sold. Inasmuch as each statute specifies a different person and different means by which lands may be sold, it is not possible to give effect to both in this instance. Thus, R.C. 151 mandates that R.C. 1541.081 prevail as an exception to R.C. 1501.01, unless R.C. 1501.01 is the later enactment and there is a manifest intent that it take precedence. See City of Cincinnati v. Thomas Soft Ice Cream Inc., 52 Ohio St. 2d 76, 369 N.E. 2d 778 (1977). The pertinent provisions of R.C. 1501.01 were first enacted in 1951, 1951 Ohio Laws 264, 266 (Am. Sub. H.B. 387), and R.C. 1541.081 became effective in 1955. 1955 Ohio Laws 236 (Am. Sub. S.B. 239, eff. Sept. 29, 1955). Thus, R.C. 1501.01 is not the later enactment. Nor can I find any manifest legislative intent that the provisions of R.C. 1501.01 prevail. In 1930 Op. Atty Gen. No. 1595, p. 375, my predecessor was confronted with the question whether the Conservation Council or the Conservation Commissioner had the power to lease lake lands under somewhat analogous General Code provisions. Although the Council had the general power to lease all state land under its jurisdiction, the Commissioner was specifically empowered to lease reservoir lake lands. Applying the rule that a special statute shall be read as an exception to a general provision, my predecessor opined that only the Conservation Commissioner could execute leases to state reservoir lands, in conformity with the statute granting him the power. Accordingly, I conclude that R.C. 1541.081 must be read as an exception to the Director's authority to dispose of state lands pursuant to R.C. 1501.01.

Furthermore, I find that reading R.C. Chapters 1501 and 1541 as a whole compels the conclusion that the General Assembly intended that state lake lands be accorded a different and special treatment, and, therefore, no sale of them may be made absent the following of the procedures outlined in R.C. 1541.081.

The General Assembly has, pursuant to R.C. 1541.06, "dedicated and set apart forever for the use of the public as public parks or pleasure resorts" the bodies of water known as Buckeye, Indian, and Portage Lakes, Lake Loramie, and Lake St. Marys. These lake lands shall "at all times be open to the public." R.C. 1541.07. These statutes demonstrate an intent that lake lands remain inviolate for the public's use. It is consistent with this intent to require a finding, as does R.C. 1541.081, that such lands are not needed for current or future public use before sale thereof may be made. R.C. 1501.01, on the other hand, has no requirement that a determination of of current or future use be made prior to the land's sale by the Director.

Moreover, though the Director is the chief executive officer of the Department of Natural Resources, and therefore, the division chiefs act under his supervision and control, it appears that the Chief of the Division of Parks and

Recreation has been entrusted with sole authority to administer state lake lands.<sup>1</sup> R.C. 1501.07 defines state parks as including the lake lands listed in R.C. 1541.06, and further provides that "[a]ll such state parks shall be exclusively under the control and administration of the division of parks and recreation. . . ." (emphasis added). Although some state parks may be removed from their classification as such by the order of the Director, R.C. 1501.07 forbids such removal with respect to lake lands. The "designation of lands as state parks. . . shall be conclusive and such lands shall be under the control of and administered by the division of parks and recreation." R.C. 1501.07. R.C. 1541.03 also provides that all "lands and waters dedicated and set apart for state park purposes shall be under the control and management of the division of parks and recreation. . . ." I also find significant the fact that the chief of the division of parks and recreation is designated by statute as the "agent of the state" for the sale of lake lands. R.C. 1541.081 (emphasis added). All state officers and employees, when acting in their official capacities, act on behalf of the state; however, R.C. 1541.081 directly and specifically appoints the chief as the state agent for the purpose of selling lake lands.

I conclude, accordingly, that the Director has no power to sell state lake lands pursuant to R.C. 1501.01, his power in such regard being confined to approval of the Chief's finding that the lands are not needed for public use, approval of the sale itself, and approval of contracts made by the chief.<sup>2</sup> Inasmuch as the Director cannot sell lake lands pursuant to R.C. 1501.01, it necessarily follows that he has no power of sale which may be delegated to the Lake Lands Administrator.

Your second and third questions are contingent upon an affirmative answer to the first. I turn, therefore, to your fourth question, which asks whether the Lake Lands Administrator may on his own authority, sell, lease, or otherwise dispose of interests in real property other than disputed lake lands.

The office of the Lake Lands Administrator was created for the express "purpose of resolving and preventing problems of title to lake lands." R.C. 5315.02. The title to the bill which originally enacted R.C. Chapter 5315, provided that a lake lands administrator was created "for the purpose of resolving and preventing problems of title to certain canal reservoirs claimed to be owned by the state." 1971-72 Ohio Law 161 (Sub. S.B. 90, eff. Oct. 19, 1972). The purpose of R.C. Chapter 5315 being clear, its provisions should be construed in conformity with, and in order to effectuate, the general purpose. See Humphreys v. Winous Co., 165 Ohio St. 45, 133 N.E. 2d 780 (1956).

R.C. 5315.02 provides that the Lake Lands Administrator shall employ personnel and make such contracts as may be required to carry out his duties, and make surveys and investigations concerning the ownership of lake lands. R.C. 5315.02(A). He may also contract with certain state departments for their performance of lake land functions and receive grants and aid. R.C. 5315.02(B).

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<sup>1</sup>This does not mean, of course, that the Director has no power over the Chief of the Division with respect to lake lands. The Director can initiate the process of sale by directing the Chief to determine whether certain lands are needed for public use, and must approve such determination. The Director also has the power to order that the sale proceed after all surveys and appraisals have been approved, and must also approve (or disapprove) all contracts made by the Chief. R.C. 1541.081; R.C. 1501.01.

<sup>2</sup>I do not intend that my conclusion concerning limitations on the power over land conferred on the Director by R.C. 1501.01 be read more broadly than the facts herein warrant. I express no opinion, therefore, on the question of the Director's power over lands other than lake lands, nor as to his power to dispose of lesser interests in lands, including lake lands.

The Lake Lands Administrator's primary duties may be found in R.C. 5315.03 regarding the negotiation and settlement of lake land disputes. R.C. 5315.03(A) provides that the Administrator "may negotiate agreements between claimants of lake lands, including agreements establishing the water line between lands of the state and lands of private owners, in accordance with divisions (B) and (C) of this section." The administrator is required to submit the land survey to the Department of Natural Resources, which must, within 45 days, determine whether the lands are needed for current or future use. The Administrator "may proceed to enter into agreements for those surveyed lands which are determined not to be needed or for which the department returns no determination within forty-five days" R.C. 5315.03(A). Divisions (B) and (C) of R.C. 5315.03 give the Administrator the power to negotiate an agreement diminishing or altering the state's claim to the land where the "claim of ownership of a private landowner and that of the state conflict," or upon application by a person "having title to an interest in lake lands which is a marketable record title. . . ." The administrator may sell or purchase lands under an agreement made pursuant to R.C. 5315.03(B) or (C). R.C. 5315.03(G). Funds derived from the sale of state lake lands are to be paid to the credit of the lake lands property survey special account, to be "expended in compliance with" R.C. Chapter 5315. R.C. 5315.03(H).

Consistent with the purposes of R.C. Chapter 5315, the Lake Lands Administrator may negotiate an agreement concerning lake lands only where there are conflicting claimants to the lands. The provision in R.C. 5315.03(A) that the Administrator "may negotiate agreements between claimants" (emphasis added) presupposes that there are at least two conflicting title claims to the land in question. There is no authority in R.C. 5315.03 for the administrator to sell lands over which there is no dispute of ownership, and in view of the purpose of the General Assembly that the office be created to resolve problems of title, no such authority may be implied. It is my conclusion, therefore, that the Administrator has no authority to sell lands other than disputed lake lands.

Accordingly, it is my opinion, and you are advised, that:

1. R.C. 1541.081 operates as an exception to R.C. 1501.01, and as such, the Director of the Department of Natural Resources may not sell lake lands pursuant to his general authority to dispose of state lands under the Department's jurisdiction.
2. The Chief of the Division of Parks and Recreation of the Department of Natural Resources is the agent of the state for the sale of lake lands, and any sale of such lands must be effectuated in conformity with R.C. 1541.081.
3. The Lake Lands Administrator has no authority to sell lake lands where there is no dispute or question as to title thereto and ownership thereof.