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COUNTY COMMISSIONERS — WITHOUT AUTHORITY TO
PROMULGATE AND ENFORCE REGULATIONS TO CONTROL
TRAFFIC IN WATERCRAFT—NAVIGABLE WATERS WITHIN
THE COUNTY.

SYLLABUS:

A board of county commissioners is without authority to promulgate and enforce regulations designed to control the traffic of watercraft in the navigable waters within the county concerned.

Columbus, Ohio, August 24, 1955

Hon. Harvey E. Hyman, Prosecuting Attorney
Paulding County, Paulding, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“In Paulding County we have a river known as the Auglaize River. A portion of this river is used extensively by very small watercraft powered by motors. The speed and use of these streams by said watercraft has become a distinct hazard to other persons using said stream for propelled watercraft and also persons swimming. A perusal of the statute does not disclose to the undersigned any statutory regulations of the same.

“Please advise if it would be legal for the county commissioners of this county to set up rules and regulations governing the use of this and other streams in the county. Neither this stream nor its tributaries come under any state park or other state regulatory organizations.”

Because you indicate that there is a considerable amount of traffic by small motor-driven watercraft on the stream in question, we may reasonably assume that such stream is a navigable one under the rule established in *Coleman v. Schaeffer*, 163 Ohio St., 202. Such streams are regarded as public thoroughfares, Chief Justice Weygant, in his opinion in the *Coleman* case having quoted with approval from *Lamprey v. State*, 52 Minn., 181, the following language on this point:

“* * * The division of waters into navigable and non-navigable is merely a method of dividing them into public and private, which is the more natural classification; * * *”

It does not follow, however, simply because a navigable stream is a public thoroughfare, that the county commissioners are given any jurisdiction to control traffic thereon. The paramount authority in the control of traffic in navigable waters is, of course, the national government. *State v. Railway*, 94 Ohio St., 61. However, the several states may properly regulate such traffic in cases where the national government fails to exercise its power to do so. See *Railway v. Ohio*, 165 U. S. 365.

In the case at hand it does not appear that either the national or state government has chosen to exert any regulatory authority, but what is more to the point is the failure of the state to delegate any authority to the boards of county commissioners to exercise control of such water traffic. The proposition that administrative agencies, such as boards of county commissioners, are creatures of statute and enjoy only powers conferred by express statutory grants or such as are necessarily implied in such express grants, is so well established in Ohio as to require no citation of authority.

Because I find no statutory provision which even remotely suggests such a delegation of authority the conclusion that a board of county commissioners lacks the power to control water traffic seems inescapable. I must conclude, therefore, in specific answer to your inquiry, that a board of county commissioners is without authority to promulgate and enforce regulations designed to control the traffic of watercraft in the navigable waters within the county concerned.

Respectfully,
C. WILLIAM O'NEILL
Attorney General