

**OPINION NO. 77-096****Syllabus:**

The Toledo-Lucas County Port Authority must obtain a permit pursuant to R.C. 1505.07 in order to drill for oil and gas within the confines of the dredge disposal area at the Port Authority's Facility No. 3 in Maumee Bay.

**To: Robert W. Teater, Director, Dept. of Natural Resources, Columbus, Ohio**

**By: William J. Brown, Attorney General, December 19, 1977**

I have before me your request for my opinion as to whether the Toledo-Lucas County Port Authority must secure a permit pursuant to R.C. 1505.07 before drilling for oil and gas within the confines of the Corps of Engineers dredge disposal area at the Port Authority's Facility No. 3. You indicate that the dredge disposal area consists of an impervious dike of approximately twenty-eight feet in height, enclosing approximately two hundred and forty acres. The disposal area, which was constructed for the deposit of dredged material from the Maumee River Bay, is within the parcel deeded to the Port Authority by the State of Ohio pursuant to Am. S.B. 23, effective October 31, 1967.

Am. S.B. No. 263 is styled an act "to authorize and direct the conveyance of certain submerged and filled lands, in Maumee Bay adjacent to the Maumee River, to the Toledo-Lucas County Port Authority," Section 2 of the Act describes the land conveyed as "that parcel of offshore land in Maumee Bay . . . ."

In most circumstances a person desiring to drill for oil or gas must secure a permit pursuant to R.C. 1509.05, which states in part as follows:

No person shall drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original, or plug back a well to a source of supply different from the existing pool, without having a permit to do so issued by the chief of the division of oil and gas . . . .

Such permit shall be issued by the chief in accordance with the provisions of Chapter 1509 of the Revised Code.

The General Assembly has, however, enacted an alternate permit process for the removal of minerals from Lake Erie. This process is set forth in R.C. 1505.07 as follows:

Subject to the limitation set forth in section 1505.08 of the Revised Code, the director of natural resources, with the approval of the director of environmental protection, the attorney general, and the governor, may issue permits and make leases to parties making application, for permission to take and remove sand, gravel, stone, gas, oil, and other minerals or other substances from and under the bed of Lake Erie, either upon a royalty or rental basis, as he deems best for the state. No such permit shall be issued or lease made to take or remove gas or oil until July 1, 1978 . . . .

No person shall remove sand, gravel, stone, or other minerals or other substances from under the bed of Lake Erie without first obtaining a permit or lease therefore from the director. (Emphasis added.)

The issue to be determined is, therefore, whether drilling for gas and oil within the described dredge disposal area in Maumee Bay constitutes a taking or removal of such minerals from and under the bed of Lake Erie. The determination rests upon the meaning of the term "Lake Erie" for the purposes of R.C. 1505.07. In Hogg v. Beerman, 41 Ohio St. 81 (1884) the Ohio Supreme Court noted that the term "Lake Erie" has two possible meanings. The court described this ambiguity at 98 stating, "In one sense all of its bays and harbors are parts of the lake. In another sense the name 'Lake Erie' embraces only the main water, excluding land-locked bays and harbors." Thus, if the name "Lake Erie" as used in R.C. 1505.07 embraces the main waters of the lake and all harbors and bays connected thereto, the Port Authority must comply with the provision of R.C. 1505.07. If, on the other hand, R.C. 1505.07 merely refers to the main waters of the lake, exclusive of land-locked bays and harbors, the Port Authority may apply for a permit to drill pursuant to R.C. 1509.05.

R.C. 1.42 provides that words and phrases in statutes shall be construed according to common usage unless such words and phrases have acquired a technical or particular meaning by legislative definition or otherwise. In Hogg v. Beerman, *supra*, the court concluded that the name "Lake Erie" in its popular sense included all its bays and harbors as part of the lake. Since the General Assembly has not expressly defined Lake Erie for the purpose of R.C. 1505.07, I must conclude, pursuant to R.C. 1.42, that the popular meaning is the intended meaning. Thus, the term "Lake Erie," as used in R.C. 1505.07, refers to the main waters of the lake as well as all bays and harbors connected thereto.

Thus, it is my opinion and you are so advised that the Toledo-Lucas County Port Authority must obtain a permit pursuant to R.C. 1505.07 in order to drill for oil and gas within the confines of the dredge disposal area at the Port Authority's Facility No. 3 in Maumee Bay.