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LEGISLATURE—WHERE IN ABSENCE OF LEGISLATIVE INTENT TO CONTRARY LEGISLATURE DELEGATED AUTHORITY TO DEPARTMENT OF STATE GOVERNMENT TO ACQUIRE REAL ESTATE—POWER SHOULD BE DEEMED TO BE CONCURRENT WITH THAT DELEGATED TO DIRECTOR OF DEPARTMENT OF PUBLIC WORKS—SECTION 154-40 G. C.

SYLLABUS:

In the absence of any indication of legislative intent to the contrary, where the legislature has delegated authority to a department of the state government to acquire real estate necessary for its operations, such power should be deemed to be concurrent with that delegated to the Director of the Department of Public Works under Section 154-40 of the General Code.

Columbus, Ohio, July 20, 1950

Hon. S. O. Linzell, Director, Department of Public Works  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The creation by the 98th General Assembly of the Department of Natural Resources brought about the transfer thereto

of certain duties of the Director of Public Works. An apparent overlapping of the operating sections of the General Code resulted.

“Section 12, Article VIII, of the Constitution of the State of Ohio outlines the powers and duties of the Superintendent of Public Works and Section 154-40(5) vests in the Director of Public Works, among other things, the power and duty ‘To purchase all real estate required by the state government, or any department, office or institution thereof \* \* \*.’

“Section 154-40 (8): ‘To procure, by lease, storage accommodations for the state government, or any department, office or institution thereof.’

“Section 154-40 (10): ‘To lease office space in buildings for the use of the state government, or any department, office or institution thereof.’

“Section 154-40(12): ‘To exercise general custodial care of all real property of the state.’

“The Legislature, over a period of years, has vested equivalent authority in other departments of state such as the Highway Department, as evidenced by Sections 1178-4, 1178-13 and 1178-14; the Department of Liquor Control, under Section 6064-8, subsection 3, and now the Department of Natural Resources, under Sections 154-10, 412-1, 1178-10A and 1435-1.

“While there has been no disagreement between the departments involved, the need for interpretation of the apparently overlapping sections has been made necessary by the submission to me for approval of several encumbrances for acquisition of lands for the Department of Natural Resources.

“Specifically, it is requested that I be formally advised:

“1. As to my authority and duties relating to real estate as stipulated in Section 154-40 of the General Code, in the light of the several sections cited above.

“2. Is my approval also required where equivalent statutory authority has been given to another administrative officer?”

Your letter indicates that you are concerned about an apparent conflict of authority between the powers of your office and the office of the Director of Natural Resources. You point out that the statutory powers of your office include authority to acquire the real estate required by the state government, or any department or office thereof, while on the other hand several other departments are apparently granted similar powers with respect to their operations. The Department of Natural Resources falls within the latter category.

You request my opinion on what are your powers and duties in connection with acquiring real estate when similar powers are delegated to the office more directly concerned. You have reviewed the pertinent statutory provisions relating to your office, and therefore it will not be necessary to repeat them here. The authority of the Director of Natural Resources to acquire real estate is contained in Section 154-10, General Code, which reads in pertinent part as follows:

“\* \* \* Whenever authorized by the governor so to do, the director of natural resources shall be empowered to appropriate property for the uses and purposes contained in this act and on behalf of any division within the department of natural resources. Such authority shall be exercised in the manner provided in sections 442 to 451, both inclusive, of the General Code for the appropriation of property by the superintendent of public works. This authority to appropriate property shall be in addition to the authority provided in this act or by existing law for the appropriation of property by divisions of the department of natural resources. He may also, subject to the approval of the governor, acquire by purchase, lease, or otherwise such real and personal property rights or privileges in the name of the state as he may deem necessary for the uses and purposes of the department or any division therein. \* \* \*”

In the absence of any indication of legislative intent to the contrary, the only reasonable conclusion to draw from the above situation is that the two offices concerned have concurrent powers. This is consistent with the decision rendered by the Supreme Court of Ohio in *Trumbull County Board of Education v. State, ex rel. Van Wye*, 122 O. S. 247, where the court noted that two governmental boards may be authorized to exercise administrative functions with respect to the same subject matter.

More directly in point is the holding of a previous Attorney General in 1946, 1946 Opinions of the Attorney General, p. 505. The question there arose because of the apparent duplication of authority between your office and the Conservation and Natural Resources Commission of Ohio. The then Attorney General observed as follows, at p. 507:

“It is a primary rule of statutory construction that all statutory provisions should be so construed if possible as to give full force and effect to each and all of them. See 37 O. Jur., p. 617, and cases cited therein. As I have hereinbefore indicated, Section 154-40 and Section 472, General Code, are not, in my opinion, inconsistent or repugnant to each other. There is no limitation on the number of governmental agencies which the

General Assembly can authorize to exercise the power of eminent domain. In this regard the General Assembly has also granted the authority to exercise this power for the acquisition of real property needed by the state in building highways to the Director of Highways. See Section 1178-2 and related sections."

In view of the preceding, and in answer to your question, I am of the opinion that, in the absence of any indication of legislative intent to the contrary, where the legislature has delegated authority to a department of the state government to acquire real estate necessary for its operations, such power should be deemed to be concurrent with that delegated to the Director of the Department of Public Works under Section 154-40 of the General Code.

Respectfully,

HERRBERT S. DUFFY,  
Attorney General.