

1594.

APPROVAL, BONDS OF SHARONVILLE VILLAGE SCHOOL DISTRICT,
HAMILTON COUNTY—\$30,000.00.

COLUMBUS, OHIO, March 6, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1595.

LEASES—STATE LANDS—HOW EXECUTED.

SYLLABUS:

Leases of State lands adjacent to the reservoirs mentioned in Section 471, General Code, should be executed on behalf of the State of Ohio by the Conservation Commissioner. Leases of such other state lands as, under the provisions of Section 472-1, General Code, are within the jurisdiction of the Conservation Council, should be executed in such manner as the Conservation Council may by resolution direct.

COLUMBUS, OHIO, March 7, 1930.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication requesting the preparation of lease forms to be used in leasing State Reservoir Lands under the provisions of the Conservation Law, so called, which was enacted by the 88th General Assembly as Amended Senate Bill No. 131, and which went into effect July 25, 1929.

The request made in your communication requires a determination with respect to the proper authority to execute leases of this kind on behalf of the State of Ohio. The determination of this question calls for a consideration not only of the provisions of Amended Senate Bill No. 131, above referred to, but of other statutory provisions relating to State Reservoirs and Reservoir Lands, and likewise of the applicable statutory provisions relating to the Department of Agriculture as the same is set up as a department of the State government in the Administrative Code.

The status of State reservoirs and reservoir lands as public parks is fixed by the provisions of Section 469, General Code, which reads as follows:

“The body of water and adjacent state lands in Licking, Fairfield and Perry counties, known as the Licking reservoir or Buckeye Lake; the body of water and adjacent State lands in the northwestern part of Logan County, known as the Lewistown reservoir or Indian Lake; the body of water and adjacent lands owned by the State, in the county of Mercer, known as the Lake St. Marys, the bodies of water and adjacent lands owned by the State consisting of the Summit County lakes and reservoirs of the Ohio canal, known as the Portage-Summit reservoirs, together with the Summit lake and sufficient of the Summit level of the Ohio

canal to maintain the present water level of Summit and Nesmith lakes, and the body of water and exterior lands adjacent thereto that are included in the reservoir constructed by the board of public works in Coventry Township for the purpose of supplying water for the Ohio canal, known as 'North reservoir,' all situated in Summit County; likewise the body of water and adjacent lands owned by the State in Shelby and Auglaize Counties, and known as the Loramie reservoir, are hereby dedicated and set apart forever for the use of the public, as public parks or pleasure resorts.

The bodies of water mentioned in this section shall, in the order in which they are described be named and designated as follows: 'Buckeye Lake,' 'Indian Lake,' 'Lake St. Mary's,' 'The Portage Lakes,' and 'Lake Loramie.'

Under the provisions of Sections 411 and 428 of the General Code and the provisions of Section 472, General Code, as they read prior to the effective date of the Conservation Law, the State reservoirs and the lands thereof mentioned in Section 469 of the General Code, were under the jurisdiction and control of the Superintendent of Public Works who, under the then provisions of Sections 464 and 471, General Code, was authorized and empowered to execute reservoir land leases on behalf of the State, subject to the approval of the Governor and the Attorney General.

By the enactment of Amended Senate Bill No. 131 there was created a Division of Conservation in the Department of Agriculture, which division consists of a Conservation Council of eight members appointed by the Governor and a Commissioner of Conservation appointed by the Director of Agriculture upon recommendation of the Conservation Council.

By Section 1438-1, General Code, as enacted in Amended Senate Bill No. 131, it is provided that the Conservation Council shall have and take the general care, protection and supervision of the State parks known as Lake St. Marys, Portage Lakes, Lake Loramie, Indian Lake, Buckeye Lake, Guilford Lake and all other State parks and lands owned by the State or in which it is interested or may acquire or become interested, except lands, the care and supervision of which are vested in some other officer, body, board, association or organization.

Section 1438-3, General Code, as enacted by said act, provides, among other things, that upon the delivery to the office of the Governor of a written notice by the Conservation Council that it has organized, that the Director of Agriculture has appointed the Conservation Commissioner and that he has accepted and qualified as such, and that the Conservation Council is ready to assume its duties and exercise its powers, such records, leases, papers, supplies, rights and property belonging to or in the custody of the Department of Public Works for the supervision, maintenance and improvement of the State reservoir parks, pertaining to and necessary for the administration of the powers and duties transferred to the Division of Conservation shall be transferred to and shall be in custody of and under the control of said Division of Conservation. This section further provides that unexpended balances of the appropriations of the Division of Public Works for service, improvements or maintenance of State reservoir parks transferred to the Division of Conservation are appropriated and made available to the Division of Conservation created by said act.

Section 471, General Code, as amended in the act above referred to is more directly applicable to the question here presented. This section now reads as follows:

"No State lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake or Portage Lakes shall ever be sold, but the conservation commissioner may lease such lands, including marginal strips and marsh lands around said lakes, the outer slopes of artificial embankments, islands, borrow pits and State lands adjacent thereto as he deems proper under the laws governing the leasing of canal lands."

Section 472, as amended by said enactment, provides in part as follows:

"All lands and waters now or hereafter dedicated and set apart for public park or pleasure resort purposes, or which may hereafter be acquired for such purposes, shall be under the control and management of the conservation council, who shall protect, maintain and keep them in repair. The conservation council shall have the following powers over all such lands and waters, to-wit: To make alterations and improvements thereof, to construct and maintain dikes, wharves, landings, docks, dams and other works, and to construct and maintain such roads and drives in, around, upon and to such lands and waters as shall make them conveniently accessible and useful to the public. * * * "

This section is followed by Section 472-1, General Code, which provides:

"The conservation council shall exercise all powers and duties heretofore conferred by law upon the superintendent of public works with respect to the control, management, lease and sale of swamp, marsh, overflow lands and all other lands within the State to which the State has or should have the title, except canals and public works and institutional lands, but no land lease or sale of lands shall be made except upon the written approval of the governor and the attorney general."

Section 478, General Code, as amended in the enactment of the Conservation Law, provides that the Conservation Commissioner shall collect all rentals for leases on State lands; and Section 473, General Code, as amended in said act, requires him to keep a separate account of all revenues derived from leases of State park lands, and likewise of all funds derived from the sale of special privileges in connection therewith. This section further provides that he shall credit, in a separate account, to each park or pleasure resort, all moneys derived from the lease of land or sale of special privileges in connection therewith. In this connection, however, it is to be noted that Section 486, General Code, as amended by said act, provides that the Conservation Council shall include in its annual report to the Governor a statement setting forth its action on all matters pertaining to the management and control of all State reservoirs, lakes and lands set apart for public parks or pleasure resorts, which statement shall include a statement of the receipts and expenditures on account thereof.

In the consideration of the question here presented, it is to be further noted that by Section 154-42, General Code, the Division of Conservation is set up as a part of the Department of Agriculture. In this connection, said section now provides as follows:

"The Department of Agriculture shall have all powers and perform all duties vested by law in the Board of Agriculture, the Secretary of Agriculture, the Agriculture Advisory Board, the Division of Conservation

and in all other bureaus and offices established or authorized by law under the Board of Agriculture or the Secretary of Agriculture. * * * ”

By an amendment of Section 154-6, General Code, the office of Conservation Commissioner was set up as an office in the Department of Agriculture, as to which it is pertinent to note that Section 154-8, General Code, provides that with the approval of the Governor, the director of each department shall establish divisions within his department and distribute the work of the department among such divisions and that “each officer created by Section 154-6 of the General Code shall be the head of such a division.”

The Department of Agriculture, among other departments of the State government, is created by the provisions of Section 154-3, General Code, the pertinent provisions of which are as follows:

“The following administrative departments are created: * * *

The Department of Agriculture, which shall be administered by the Director of agriculture, hereby created; * * *

The director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department.”

In this situation as to the statutory law touching and affecting the question at hand, it is clear that unless the provisions of the Conservation Act indicate an intent to confer upon the Conservation Division created by said law, the power and authority to control and manage State reservoirs and State reservoir lands, independent of the Director of Agriculture who is head of the department of which said Conservation Division is part, the authority and duties of said Conservation Council with respect to State reservoirs and lands and State parks are to be carried out and performed by or in the name of the Director of Agriculture. See *Swartz vs. Board of Education*, 18 O. App., 17; *Opinions of the Attorney General*, 1922, Vol. I, page 269. I am inclined to the view, however, that the Conservation Act, viewed in its entirety, does indicate a legislative intent that the Conservation Division shall exercise its statutory powers and duties with respect to State reservoirs and lands independently of the Director of Agriculture.

This leads us to a consideration of the somewhat difficult question as to whether the authority and duty of executing leases of State reservoir lands are conferred and imposed upon the Conservation Council or upon the Conservation Commissioner who, together with the functions exercised by them respectively, make up the Conservation Division created by said act.

In this connection, it will be noted that Section 472-1, General Code, above quoted, which is general in its terms, provides that the Conservation Council shall exercise all power and duties heretofore conferred by law upon the Superintendent of Public Works with respect to the control, management, lease and sale of swamp, marsh, overflow lands, and all other lands within the State to which the State has title, except canals, public works and institutional lands. State reservoir lands come within the category of lands to which the State has title, and as such are subject to lease by the Conservation Council under the provisions of this section. It is to be noted, however, that Section 471 as amended by the Conservation Act specifically provides that the Conservation Commissioner may lease State lands in or adjacent to the particular State reservoirs mentioned in said section, to-wit, Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake and Portage Lakes. It is apparent that there is manifest inconsistency in the

provisions of Sections 471 and 472-1 in their application to the question here presented. In the determination of this question, in view of the conflicting provisions of these sections of the General Code as amended in the enactment of the Conservation Law, it is apprehended that consideration must be given, not to conjectures as to what the Legislature intended with respect to this matter in the enactment of the Conservation Law, but to the provisions of the act as enacted in the light of established rules of statutory construction applicable to the situation here presented. A rule of statutory construction that is often applicable in the solution of questions of this kind is that stated in the syllabus in the report of the case of *City of Cincinnati vs. Connor*, 55 O. S. 82, as follows:

"Where, in a code or system of laws relating to a particular subject, a general policy is plainly declared, special provision should, when possible, be given a construction which will bring them in harmony with that policy."

I am unable to find from a consideration of the statutory provisions found in the Conservation Act or elsewhere, as above noted, any declared policy with respect to the question at hand that gives exclusive effect to said Section 471 or Section 472-1, General Code, as against the other.

This situation calls to mind two other rules of statutory construction, both of which are noted in the syllabus of the report of the case of *State ex rel. Myers, vs. Industrial Commission of Ohio*, 105 O. S. 103, as follows:

"1. The different sections and parts of sections of the same legislative enactment should if possible be so interpreted as to harmonize and give effect to each and all, but if there is an irreconcilable conflict the later in position should prevail.

2. The special provisions in any legislative enactment must prevail over general provisions."

The first rule of construction above noted is clearly the weaker one of the two. Touching this rule, it is pertinent to note that in the case of *State ex rel. Attorney General vs. Mulhern*, 74 O. S. 362, the court held:

"In giving construction to a legislative act the position in the order of precedence of the several provisions will be given due consideration, but there is no arbitrary rule which requires that a provision found in the later part of the act shall necessarily be given an effect to repeal conflicting provisions in the earlier part of the act."

The court in this case recognizing the rule of construction applied by the court in the case of *Cincinnati vs. Connor*, supra, further held that:

"Where such conflicting provisions are irreconcilable, the court may, if the subject-matter is of minor interest, hold the whole act to be inoperative. But where the matter is of vital interest, a court will seek such construction as will make the act enforceable, and in doing so will be governed by the apparent purpose and obvious policy and intent of the general assembly, as gathered from the whole act, even though it results in a disregard of the later provision."

As stated above, there is no such obvious policy with respect to the question

at hand to be gathered from the Conservation Law or elsewhere in the applicable statutes which justifies a disregard of said Section 471 or Section 472-1, General Code. In this situation we are remitted to a consideration of the second rule of statutory construction above noted. This rule, which has been recognized in many decisions by the courts of this state and of other jurisdictions, is stated in Section 216 in Endlich on the Interpretation of Statutes, which is quoted with approval in the case of *Doll vs. Barr*, 58 O. S. 113, 120, as follows:

“Where there are in one act, specific provisions relating to a particular subject, they must govern in respect to that subject, as against general provisions in other parts of the statute, although the latter, standing alone would be broad enough to include the subject to which the more particular relate.”

This rule is further stated by way of quotation in the opinion of the court in the case above cited, as follows:

“If there are two acts, or two provisions of the same act, of which one is special and particular, and clearly includes the matter in controversy, whilst the other is general and would, if standing alone, include it also, and if reading the general provisions side by side with the particular one, the inclusion of that matter in the former would produce a conflict between it and the special provision, it must be taken that the latter was designed as an exception to the general provision.”

Other cases in which this rule of construction is noted and applied are: *City of Cincinnati vs. Holmes*, 56 O. S. 104; *Gas Co. vs. Tiffin*, 59 O. S. 420, 441; *Weirick vs. Mansfield Lumber Co.*, 96 O. S. 386, and *Mutual Electric Co. vs. Pomeroy*, 99 O. S. 75.

In the application of this rule of construction with respect to the question here presented, it is to be observed that Section 471, General Code, applies to the lease of lands adjacent to or connected with only the particular lakes and reservoirs named in said section, while the provisions of Section 472-1, General Code, are general in their nature and, standing alone, apply not only to the lease of all State reservoir lands, but to all other lands of which the State has title, except canal lands, public works and institutional lands. Conformable to the fundamental rule of construction above noted, the provisions of Section 471, General Code, must be read as an exception to the more general provisions of Section 472-1, General Code, which leads to the conclusion that leases of State lands adjacent to the reservoirs mentioned in Section 471, General Code, are to be executed by the Conservation Commissioner; and that other State lands within the purview of Section 472-1, General Code, are to be leased by the Conservation Council. The Conservation Council can act only as a board, and leases of State lands within its jurisdiction for the purpose, may be executed in such manner as it may by resolution direct.

I am herewith submitting to you form of reservoir land lease with respect to State lands to be leased by the Conservation Commissioner, under the provisions of Section 471, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.