

that by virtue of section 6491 such per diem is to be paid to the commissioners from the general ditch improvement fund and not out of the general county fund.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1669.

APPROVAL, BONDS OF VILLAGE OF DUBLIN IN AMOUNT OF \$2,500
 FOR ELECTRICAL CONSTRUCTIONS.

COLUMBUS, OHIO, December 2, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1670.

APPROVAL, BONDS OF HAMILTON TOWNSHIP, LAWRENCE COUNTY,
 OHIO, IN AMOUNT OF \$16,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, December 2, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1671.

PUBLIC WORKS—DISCUSSION OF OWNERSHIP OF ORCHARD ISLAND
 AND JOURNAL ISLAND, BUCKEYE LAKE, OHIO.

*The superintendent of public works advised as to the course to be followed
 in the matter of Orchard Island and Journal Island, Buckeye Lake, Ohio.*

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

COLUMBUS, OHIO, December 3, 1920.

DEAR SIR:—You have recently written to this department as follows:

“Herewith I am transmitting, for your consideration, three documents which have been presented to this department and which are in a measure, self-explanatory.

The claim has been set up by Mr. J. E. Butler that the aforesaid documents establish his rights to the ownership of a certain island at Buckeye Lake and part of another island.

He has requested in his letter that I make a certain certificate to the auditor of Fairfield county, renouncing the state's claim to Journal Island, and authorizing said auditor to place Journal Island on the tax duplicate of Fairfield county as belonging to Mr. Butler.

What are my rights and duties, as superintendent of public works, in the premises?”

The three documents which you mention as being transmitted with your letter are, first, a brief directed to you by Mr. Butler in support of his claim to the lands mentioned by you; second, an abstract of title to the quarter section which embraces the two islands in question; and, third, a transcript of the opinion (rendered February 26, 1912) of the circuit court of Franklin county, Ohio, in case No. 3011, State of Ohio, plaintiff in error, vs. Margaret Fenn, et al., defendants in error.

The two islands to which Mr. Butler's claim relates are known as Orchard Island and Journal Island. Both these islands are in the southwest quarter of section 23, township 17, range 18. The waters of Buckeye Lake cover all of said quarter section save said two islands and a small tract of 5.59 acres lying on the border of the lake. The condition just described has been the same, so far as appears, at least as far back as 1832, when the main part of Buckeye Lake, then known as Licking reservoir, was completed.

The abstract of title submitted by Mr. Butler shows that in 1857 the quarter section in question was patented to John Harris, Jr.; that the title passed by descent and devise to said Harris' grandson, and from him, by devise to his widow, Katherine A. Mather, who, on March 2, 1920, executed a quit-claim deed for the quarter section to J. E. Butler, the present claimant.

Further facts in connection with the matter are set out in Mr. Butler's brief, as shown by the following paragraphs quoted therefrom:

"On March 13, 1894, both islands were leased by the state of Ohio to W. C. Wells for a term of fifteen (15) years. During this fifteen (15) year period, Wells sub-divided Orchard Island into fifteen (15) lots, and sublet most of them to other persons. On some of these lots houses were built, which I am informed by Mr. Booten of your department have been standing for more than twenty-one (21) years. I should be glad to have your opinion as to whether or not this occupation for such period of time of a part of the lots as subdivided by Wells, would constitute an occupation by the state, (the actual occupation being by the state's lessee, which I presume, in law would amount to occupation by the state) of the entire island by the state, for the statutory period of twenty-one (21) years.

Three days following the expiration of this lease to Wells, several leases were granted by the state to Wells' subtenants and in several cases the occupation remained undisturbed. A few of the lots have never been built on.

During the fifteen (15) year period above mentioned, Journal Island was used very intermittently by campers and fishermen. There were no buildings of any kind erected and the island was unoccupied practically all of the time. This lease expired on March 13, 1909. From that date until the fall of 1909 this island was entirely and continuously unoccupied. On July 9, 1909, the state granted a lease on this island to George C. Urlin which was later transferred to Robert F. Wolfe. In possession under that lease Robert F. Wolfe erected a cottage on Journal Island in the fall of 1909 and this cottage remains on this island at the present time.

The time, then, during which the state or a tenant under a lease from the state, has openly and continuously occupied Journal Island is from the fall of 1909 up to the present time, or approximately eleven (11) years."

Following the statement just quoted, Mr. Butler advances the claim that the state's occupancy of the two islands has not been such as to come within the statute

of limitations, or that at most the statute has run only as to a portion of one of the islands on which houses were built more than twenty-one years ago.

Assuming, for the sake of the argument, that Mr. Butler's contentions are correct, what action, if any, are you authorized to take with reference to the situation?

Officers of the state must look to the statutes for their guidance; and they have no authority to take action except to the extent expressly, or by necessary implication, authorized by statute.

Section 13961 G. C. et seq. provides generally for the leasing and sale of canal lands. These sections had their inception in the act of March 28, 1888 (85 O. L. 127), providing for the appointment of a canal commission. The powers and duties of said commission were by act of April 2, 1906, lodged in the board of public works providing for the appointment of a canal commission. The powers and duties of said commission were by act of April 2, 1906, lodged in the board of public works (98 O. L. 306) and were later by act of March 6, 1913, transferred to the superintendent of public works (103 O. L. 119, 127). Section 464 G. C., as amended in the last named act, was later amended by act of April 14, 1919, and now reads (108 O. L. 630):

"In addition to the powers and duties herein conferred upon the superintendent of public works, said superintendent shall exercise all of the powers and duties heretofore conferred by law upon the Ohio canal commission and the board of public works with respect to the lease and sale of canal or other state lands, the location, ascertainment, perfection and recording of title to all swamp, marsh, overflow lands and all other lands within the state, to which the state has or should have title, and all other powers and duties now conferred by law upon said canal commission or board of public works, but no land lease, or sale of canal or other state lands, shall be made except upon the written approval of the governor and the attorney general."

The general tenor of said sections 13961 G. C. et seq. is that subject to such approval of the governor and attorney-general, the superintendent of public works may make fifteen year leases, and in certain cases may make sale, of canal lands not needed for canal purposes. The basis of such leases or sales is a finding by the superintendent that the lands belong to the state.

No provision has been found in such statutes or elsewhere in the General Code pointing out a course to be followed as to lands in the possession of the state in case the state's title be found defective, or in case the state be ascertained to have no title. It is true that there are provisions for the making of deeds by the state (sections 8523 et seq.), but these provisions have reference to sales made in pursuance of law and to the correction of errors in previous deeds. It clearly follows, then, that you are without authority to act in compliance with the suggestion that you renounce the state's claim or authorize an entry in Mr. Butler's name on the tax books.

It affirmatively appears from the statement submitted, that as early as 1894, the state, proceeding upon the basis that it was the owner of the two islands, leased them, and has at all times since had them under lease, with the exception of a few days time in the case of one island and a few months time in the case of the other. This lapse of a short time between the expiration of the original leases and the granting of new ones was doubtless due to administrative reasons. As has already been mentioned, it is probable that the state has been in actual possession of the islands since 1832,—almost a century.

Under these circumstances, the executive officers of the state may, with propriety, pursue only one course in justice to the state and its lessees, namely, maintain the state's possession of the islands unless and until otherwise ordered by the legislature or the courts.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1672.

LONGVIEW HOSPITAL—SUPPORTED IN PART BY STATE WITHIN MEANING OF SECTION 2314 G. C. (107 O. L. 453)—BY REASON OF SECTION 26 G. C. THE ABOVE SECTION NOT APPLICABLE TO BUILDINGS TO BE ERECTED ON HOSPITAL GROUNDS—PROCEEDINGS COMMENCED PRIOR TO ENACTMENT OF SAID AMENDED SECTION.

Though Longview Hospital is an institution supported in part by the state, within the meaning of section 2314 G. C., as amended in 107 O. L. 453, that section, by reason of section 26 G. C., does not apply to the new building proposed to be erected on the hospital grounds pursuant to proceedings commenced prior to the enactment of said amended section.

COLUMBUS, OHIO, December 3, 1920.

HON. LOUIS H. CAPELLE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your letter of recent date relative to the erection of a new building on the Longview Hospital grounds was duly received, and reads as follows:

“In the year 1915 the electors of Hamilton county authorized the issuance of bonds in the amount of \$500,000.00 for the erection of a new building on the Longview Hospital grounds.

On May 10, 1916, the Longview building commission, appointed in accordance with the provisions of section 2333, held its first meeting and thereafter on June 22, 1916, a contract was entered into between the building commission and (certain) architects, for the preparation of plans, profiles, specifications and estimates for the new building.

On March 21, 1917, bids were received and the lowest bid exceeding the estimate, all were rejected and the clerk directed to re-advertise. On April 25, 1917, bids were again opened with the same result, whereupon the commission adopted a resolution determining to defer any action until a more suitable period for construction, inasmuch as the high cost of labor and materials at that time did not justify a re-advertisement.

On October 27, 1919, the commission, at a regular meeting, determined to proceed with the construction of the building, and the architects were directed to revise their plans so that the cost of the structure would fall within the appropriation. The plans have been submitted.

The question now arises as to whether or not it is necessary to have those plans approved by the state building commission, and whether the construction of this building falls within the provisions of the amendatory act contained in 107 O. L. page 453, which provided new procedure for the erection of state buildings and included therein—see section 2314—‘any building or structure for the use of the state or any institution supported in whole or in part by the state.’