

so far as funds are provided therefor, shall adopt and carry into effect such measures as it deems necessary in the performance of its duties.

\* \* \* \* \*

It is the duty of the conservation council to plan, develop, formulate and institute programs and policies of the division of conservation and to establish such bureaus within the division as are approved by the governor.

\* \* \* \* \*

The conservation council may make and establish such rules and regulations not inconsistent with law governing its organization and procedure and administration of the division of conservation as it may deem necessary or expedient."

It is an established principle that public officers have only such powers as are expressly conferred upon them by law and such as are necessarily implied in order to give effect to such express powers. I find in the State Game Refuge Lease blank submitted no provision reserving the right to cancel such lease. Neither do I find in any of the provisions of the statutes any express or implied power to cancel State Game Refuge Leases when no such power was reserved in the lease. Assuming, therefore, the validity of the particular State Game Refuge Leases about which you make inquiry, I am of the opinion that there is no authority to cancel them.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4136.

DIRECTOR OF HIGHWAYS—UNAUTHORIZED TO APPROPRIATE LAND  
TO PROVIDE ENTRANCE TO MAINTENANCE GARAGE.

*SYLLABUS:*

*The director of highways has no power to appropriate land for the purpose of providing an entrance to the street from a building purchased by the department of highways for a maintenance garage.*

COLUMBUS, OHIO, March 7, 1932.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"In 1929, the Department of Highways purchased a property for maintenance garage purposes in Norwalk, Ohio. Now it develops that additional land is required for entrance to the property from the streets.

The point on which we desire your opinion is:

'Does the Director of Highways have power to condemn land for this purpose?'

The land in question is in the City of Norwalk and not adjoining a State highway."

Section 1190-1, General Code, reads in part as follows:

"The director shall be authorized to secure suitable buildings for housing, storing, caring for and keeping in repair, automobiles, motor trucks, road machinery and equipment received by the department of highways from the federal government and also other automobiles, trucks, machinery and equipment owned by the department. Such building or buildings may be secured either by lease or by the purchase of a suitable site and the erection thereon of a suitable building or buildings."

While the director of highways would, under this section, have the power to purchase or lease land to provide a necessary entrance to the street from a building purchased by him for a maintenance garage, there is nothing in this section which confers upon him the power to appropriate land for such purpose.

The director of highways is given power to appropriate property for various purposes in connection with highways improvements. Sections 1199-2 and 1199-3, General Code, give him the right to appropriate additional lands for highway purposes when tracks of an interurban or street railway company, outside of a municipality, and within the bounds of a state highway improvement, may interfere with a high improvement, either for the purpose of relocating the tracks or for providing an additional roadway. Section 1229-11, General Code, gives him the right to appropriate necessary land in highway improvements involving the elimination of grade crossings.

Section 1201, General Code, reads in part as follows:

"If the director is unable, for any reason, to purchase the property for such purposes, or any of them, he shall first enter on the journal of the department of highways a finding that it is necessary for the public convenience and welfare to appropriate such property as he may deem needed for the purposes, or any of them, hereinbefore mentioned."

The remaining part of this section, together with sections 1201-1 and 1201-1a, General Code, provides the procedure to be followed in appropriating property.

Section 1202, General Code, provides as follows:

"The director shall have power and is hereby authorized to alter, widen, straighten, realign, relocate, construct, reconstruct, improve, maintain, repair and preserve any road or highway on the state highway system, and, in connection therewith, to relocate, alter, widen, deepen, clean out or straighten the channel of any water course as he may deem necessary, and to purchase or appropriate the right to make waste dumps or borrow pits, and when in altering, straightening, realigning, relocating, constructing, reconstructing or improving any such road or highway there is any portion of the existing road or highway which he deems not needed for the purposes of a public highway, he shall be authorized to vacate such portion as hereinafter provided. The director is hereby authorized to purchase or appropriate any property necessary for such purposes as may be necessary in the location or construction of any culvert, bridge, or viaduct, or the approaches thereto, or for any other highway improvement, and shall be authorized to purchase or appropriate, for such length of time as he may deem necessary and desirable, such additional property as may be required for the construction and maintenance

of slopes, detour roads, sewers or drainage systems incident to any highway improvement, which he, by law, is or may be authorized to locate or construct. Title to such property purchased by the director when for other than temporary purposes shall be taken to the state by easement deed in accordance with forms prescribed by the attorney general which easement deed shall contain a definite description of the property, and shall be recorded in the county where the property is situated, and when recorded kept on file in the department of highways."

Section 1201, in using the term "property for such purposes, or any of them," and in providing for the appropriation of property deemed needed "for the purposes, or any of them, hereinbefore mentioned," means the purposes mentioned in section 1202, as in their original enactment section 1202 immediately preceded section 1201. 112 O. L. 440.

If these several statutes are read, it will be seen that where property is provided to be acquired for highway improvements the director is expressly given the power to acquire the property by purchase or appropriation, while in section 1190-1, which gives him the right to acquire property for housing, storing and maintenance of equipment, there is no provision for appropriation but he is given the power to acquire such property by purchase or lease only.

It is well settled that the power of exercising the right of eminent domain will not be implied and the statutes will be strictly construed against the right to appropriate property. *Grant vs. Hyde Park*, 67 O. S. 166.

I am, therefore, of the opinion that the director of highways has no power to appropriate land for the purpose of providing an entrance to the street from a building purchased by the department of highways for a maintenance garage.

I might add, however, that the department of public works would doubtless have the power to appropriate the necessary land for this purpose by virtue of section 154-40, paragraph 5, General Code, which provides that such department shall have power:

"To purchase all real estate required by the state government, or any department, office or institution thereof; in the exercise of which power such department shall have authority to exercise the power of eminent domain, in the manner provided by law for the exercise of such power by the superintendent of public works in the appropriation of property for the public works of Ohio, as heretofore defined."

Respectfully,

GILBERT BETTMAN,

*Attorney General.*