

2848.

APPROVAL, LEASE TO STATE RESERVOIR LAND AT LAKE ST. MARYS—
HOMER V. GUY.

COLUMBUS, OHIO, January 21, 1931.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a certain lease in triplicate executed by the State of Ohio, through the Conservation Commissioner, by which there is leased and demised, for a term of fifteen years, to Homer V. Guy of Dayton, Ohio, a certain parcel of state reservoir land at Lake St. Marys, which parcel of land is more particularly described in said lease, which lease designated with respect to the name of said respective lessee and the appraised valuation of the parcel of land therein leased as follows:

<i>Name</i>	<i>Valuation</i>
Homer V. Guy.....	\$300.00

The lease here in question, calling for an annual rental of six per cent upon the appraised valuation of the parcel of land leased, was executed by the Conservation Commissioner under authority of Section 471 of the General Code.

An examination of said lease shows that the terms and conditions thereof are in conformity with the provisions of said section and with those of other sections of the General Code relating to leases of this kind.

Said lease is accordingly approved by me as to legality and form and my approval is endorsed upon said lease and upon the duplicate and triplicate copies thereof, and returned herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2849.

STATE HOUSE GROUNDS—ERECTION OF MONUMENTS THEREON—
DIRECTOR OF PUBLIC WORKS HAS NO AUTHORITY TO GRANT SUCH
PERMISSION TO ANY ORGANIZATION OR PERSON—LEGISLATURE
MAY EXERCISE SUCH POWER.

SYLLABUS:

Neither the Department of Public Works nor the Director of Public Works has any authority to grant permission to different organizations or persons to erect monuments on the state house grounds, since this power resides in, and has heretofore been exercised by, the legislature alone.

COLUMBUS, OHIO, January 22, 1931.

HON. A. T. CONNAR, *Director of Public Works, Columbus, Ohio.*

DEAR SIR:—I wish to make acknowledgment of the following inquiry from you:

"I am enclosing copy of a letter I received from Mrs. O. D. Dailey, Chairman Preservation Historic Spots, Albany, Ohio, in which she, together with her Committee, desire to erect a sun dial and circular bench of Georgia marble, as a Memorial to the British subjects who lived in Canada, and left their homes through sympathy with Colonists, and therefore became Refugees.

Has the Director of Public Works the power to grant permission to different organizations or persons to erect monuments on the State House Grounds?"

Having in mind that the Department of Public Works has only such powers as have been, by law, given to it expressly and such implied powers as are necessary to effectuate the express powers, your question calls for a consideration of the relevant sections of the General Code, which read:

"Sec. 154-40. The department of public works shall have all powers and perform all duties vested by law in the superintendent of public works and the state building commission. Wherever powers are conferred or duties imposed upon any such department, office or officers, such powers and duties shall, except as herein provided, be construed as vested in the department of public works.

In addition to the powers so transferred to it, the department of public works shall have the following powers:

* * * * *

(4) To prepare and suggest comprehensive plans for the development of grounds and buildings under the control of the state government, or any department, office or institution thereof.

* * * * *

(7) To erect, supervise and maintain all public monuments and memorials erected by the state, except where the supervision and maintenance thereof is otherwise provided for by law.

* * * * *

(12) To exercise general custodial care of all real property of the state." (112 O. L. 479-480)

"Sec. 154-41. *The department of public works shall have the supervision and control of the state house and heating plant therein, the fixing and placing of all departments and offices of the state therein, and full control and supervision of fixing and placing all departments and offices in offices, buildings and rooms outside of the state house when the same cannot be placed therein, materials and persons employed in and about the state, the grounds and appurtenances thereof and all work or materials required in or about them. The department shall rent all offices, buildings and rooms for all departments and offices of the state located outside the state house, and execute all leases in writing for the same on behalf of the state, and deposit a copy thereof in the office of the secretary of state within ten days after the lease has been executed. The department shall keep the state house, grounds and appurtenances constantly protected and in order, except that the legislative halls shall be under the control of the general assembly. A competent number of employes of the department shall be designated as policemen, and as such shall take an oath of office, wear a proper uniform and a badge of office, have the same authority to make arrests as policemen of cities, and shall deliver all persons arrested by them to the police authorities of the city of Columbus to be dealt with as those arrested by the police of said city.*" (112 O. L. 481)

(Italics the writer's)

Nowhere in the above reproduced statutory provisions (which are the only pertinent ones in the Code) is any express power given to the Department of Public Works to grant permission to organizations or persons to erect monuments on the state house grounds. Paragraph number 7 of Section 154-40, *supra*, does relate expressly to the erection of public monuments and memorials, but only to such as are "erected by the state"—not to those erected by private organizations or persons. Furthermore, said paragraphical legislation does not constitute the Department of Public Works the determiner of what monuments shall be erected even by the state. The department can not, because of such provision, erect any monument on any state land at any time it pleases. Paragraph 7 merely makes the department the executor of the work of erecting such monuments as have been authorized by the proper determinative authority. The department is executor, not authorizer.

Neither do I find in any of the above quoted statutes any implied authority in your department to grant the permission sought of you. Even if the monument project could be classed as "development of grounds" within the meaning of paragraph number 4 of Section 154-40, *supra*, about which I have serious doubt, this paragraph constitutes your department merely suggester—and, again, not authorizer. Likewise, no basis for the power under consideration can be implied from Paragraph 12 of Section 154-40, *supra*. Mere custodial care of the state's real property is not broad enough to include it. And as to Section 154-41, *supra*, dealing more specifically with the state house and grounds, I find nothing in the provisions confiding in your department "supervision and control of the state house," "full control and supervision of * * * the grounds and appurtenances thereof" and their protection and order, from which can be implied, reasonably, the power in question.

In fact, research has failed to disclose any officer or department in which the legislature has lodged such power. Under such circumstances the power remains exclusively with the legislature itself. It is significant to note the number of monuments and memorials for whose erection in the state house or on the state house grounds the legislature has provided by special enactment: Monument on state house ground to Ohio soldiers killed by explosion and sinking of the Steamer Sultana, General Code 15279 et seq, 98 O. L. 308; tablet in capitol rotunda to Andrew's Raiders, General Code 15291-3 et seq, 108 O. L., part I, 9; memorial to William McKinley upon the capital square, General Code 15296 et seq, 95 O. L. 959; memorial on state house grounds to Ohio soldiers and sailors of the Spanish American War, the Philippine Insurrection and the China Relief Expedition, General Code 15289-13 et seq, 112 O. L. 133; memorial on state house grounds to Ohio soldiers, sailors and marines of the World War, General Code 15289-19 et seq, 113 O. L. 14; tablets at suitable places in state house bearing names of officers and enlisted men composing the Special State Roll of Honor, General Code 14867-14 (108 O. L., Part I, 349) and 14867-23 (108 O. L., Part II, 1285).

Appreciating fully the patriotic zeal which has motivated your inquirers, as well as the unusual merit of their proposed gift, I am, nevertheless, forced to the opinion, in view of the particular status of the existing law, that neither the Department of Public Works nor the Director of Public Works has any authority to grant permission to different organizations or persons to erect monuments on the state house grounds.

Respectfully,

GILBERT BETTMAN,
Attorney General.