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SHORE EROSION, CHIEF OF DIVISION OF—SECTION 412-28 GC, 1507.03 RC, PROVISIONS NOT SUFFICIENT TO AUTHORIZE CHIEF TO GRANT PERMITS TO REMOVE OIL OR GAS DEPOSITS FROM PORTION OF LAKE ERIE WHICH LIES WITHIN STATE BOUNDARIES.

SYLLABUS:

The provisions of Section 412-28, General Code, 1507.03 Revised Code, are not sufficient to authorize the chief of the division of shore erosion to grant permits for the removal of oil or gas deposits from that portion of Lake Erie which lies within the boundaries of the state of Ohio.

Columbus, Ohio, September 30, 1953

Hon. A. W. Marion, Director, Department of Natural Resources
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Chief of the Division of Shore Erosion is authorized by section 1507.03 of the Revised Code, subject to the limitations of section 1507.11, to issue permits—‘for permission to take and remove sand, gravel, stone, minerals, and other substances from the bottom of Lake Erie, * * *’

“The second paragraph of section 1507.03 reads as follows: ‘No person shall remove minerals from and under the bed of Lake Erie without first obtaining permission therefor from the Chief.’

“A formal opinion is requested as to whether section 1507.03 authorizes the Chief of the Division of Shore Erosion to issue permits for the drilling and removal of oil and/or gas from that portion of Lake Erie within the boundaries of the State of Ohio.”

The sections in the Revised Code to which you refer above are to become effective October 1, 1953, and when effective are to be deemed merely as restatements of applicable existing statutory provisions and not as new enactments. Section 2, Amended House Bill No. 1, 100th General Assembly. We may, therefore, properly refer to the presently existing statutory provisions analogous to those to which you have invited attention.

Section 412-28, General Code, provides in part:

“* * * Subject to the limitations set forth in section 412-29 of the General Code, authority is hereby granted to the chief of shore erosion to issue permits to parties making application therefor, for permission to take and remove sand, gravel, stone, minerals and other substances *from the bottom of said lake*, either upon a royalty basis or for a fixed annual rental as he may deem for the best interests of the state; said permits for sand, gravel, stone, minerals and other substances, shall be issued for terms of not less than one nor more than ten years, to be taken within certain fixed boundaries that do not conflict with the rights of littoral owners. Upon request from the holder of such permit, the same shall be cancelled, but any equipment or buildings owned by the lessee shall be held as security by the chief of the division of shore erosion for payment of all rentals or royalties due the state of Ohio at the time of application for cancellation.

“It shall be unlawful to remove minerals *from and under the bed* of said Lake Erie without first obtaining permission therefor from the chief of the division of shore erosion. * * *”

(Emphasis added.)

This section was enacted in Amended Senate Bill No. 13, 98th General Assembly, an act designed to create the department of natural resources and to correlate the activities of the several divisions therein. In this act the division of beach erosion was created by the amendment of Section 154-6, General Code. Some indication of the legislative purpose in creating this division is found in Sections 412-24 and 412-28, General Code. The former section reads as follows:

“The office of the chief of the division of shore erosion is hereby authorized and directed to act as the erosion agency of the state of Ohio for the purpose of cooperating with the Beach Erosion Board of the United States War Department, as provided for under the provisions of section 2 of the ‘River and Harbor Act’ adopted by the Congress of the United States, and approved July 3, 1930, and known as House Resolution No. 11781, of the second session of the 71st Congress of the United States of America, and said chief of the division of shore erosion and engineers under his direction, shall cooperate with said Beach Erosion Board of the United States War Department in carrying out investigations and studies of present conditions along the main shore lines of Lake Erie and of the bays and projections therefrom, and likewise of the islands therein, within the territorial waters of the state of Ohio, with a view to devising and perfecting economical and effective methods and

works for preventing and correcting such shore erosion and damages therefrom and to prevent inundation of improved property by the waters of Lake Erie."

Section 412-28, General Code, reads in part:

"* * * The state of Ohio, acting by and through the chief of the division of shore erosion, subject to the provisions of section 412-29 of the General Code, may enter into agreements with counties, municipalities, townships, park boards and conservancy districts for the purpose of constructing projects to prevent, correct and arrest erosion along the south shore of Lake Erie, in any rivers which are connected with Lake Erie, bays connected with said lake, and any other water courses which flow into said lake; and these projects may also be constructed on any Lake Erie islands which are situated within the boundaries of the state of Ohio. * * *"

These statutory provisions lead to the inference that the primary purpose of these enactments, to the extent that Lake Erie is concerned, is to prevent erosion of the shore line, and, as an incident of such primary purpose, to conserve the sand, gravel, stone, minerals, etc., the removal of which would affect erosion at such shore line. It is true that authority is given in very general language to license the removal of "minerals and other substances," and this expression is quite clearly susceptible, standing alone, of an interpretation which would include petroleum and gas. However, in Black's Law Dictionary, Fourth Edition, we find the following statement with respect to the term "mineral":

"* * * The word is not a definite term and is susceptible of limitations or extensions according to intention with which it is used. Standing alone it might by itself embrace the soil, hence include sand and gravel, or, under a strict definition, it might be limited to metallic substances. Puget Mill Co. v. Duecy, 1 Wash. 2d 421, 96 P. 2d 571, 573, 574."

Accordingly, if the rule of *ejusdem generis* is applied to this language, as I think it proper to do, the quoted words above must be deemed to be limited to the rocky sedimentary deposits usually associated with deposits of gravel and sand at or near the surface of the soil beneath the lake. In this connection it is of some significance that this statute provides for the removal of such "minerals and other substances from the *bottom* of said lake," even though it is also provided that "It shall be unlawful to remove minerals *from and under the bed* of said Lake Erie without first

obtaining permission therefor from the Chief of the Division of shore erosion." It is a matter of common knowledge that petroleum and gas deposits are not found on the "bottom" of bodies of water but rather are found far beneath the surface of the soil forming such bottom.

It can well be supposed that the Legislature would have chosen to employ more specific language to indicate an intent to authorize the sale of gas and petroleum rights by the division. While I have no information regarding the probable existence of gas and petroleum deposits in the soil beneath Lake Erie there can be little doubt that if such deposits are found to exist there in substantial amounts they would represent extremely valuable assets of the state. I find it most difficult to suppose that the Legislature would have undertaken to make provision for disposing of such valuable assets of the state in any but express and specific language descriptive of the property to be disposed of. The statutory language here in question is not so express and specific. In this situation we may properly observe that legislative grants of administrative power to expend public funds are strictly construed and that any doubt as to the extent of such grant must be resolved in favor of the public and against the grant of power. *State ex rel. Bentley Co. v. Pierce*, 96 Ohio St., 44. There appears to be no logical reason, in my opinion, why the same rule should not be applied in the interpretation of legislative grants of power to administrative officers to dispose of public property; and I conclude, therefore, that the rule in the Bentley case, *supra*, may be deemed sufficiently broad to be applicable in the instant case.

Accordingly, in specific answer to your inquiry, it is my opinion that the provisions of Section 412-28, General Code, 1507.03 Revised Code, are not sufficient to authorize the chief of the division of shore erosion to grant permits for the removal of oil or gas deposits from that portion of Lake Erie which lies within the boundaries of the state of Ohio.

Respectfully,

C. WILLIAM O'NEILL
Attorney General