

1968.

APPROVAL—LEASE FOR RIGHT TO USE WATER TAKEN FROM THE SUMMIT LEVEL OF THE OHIO CANAL ABOVE LOCK No. 1, IN THE CITY OF AKRON, SUMMIT COUNTY—THE THOMAS PHILLIPS COMPANY.

COLUMBUS, OHIO, June 11, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval, a certain water lease in triplicate by which the state of Ohio, through you as Superintendent of Public Works, has leased and granted to The Thomas Phillips Company of Akron, Ohio, a corporation duly organized under the laws of the State of Ohio, the right to take from the Summit Level of the Ohio Canal above Lock No. 1, in said canal, a quantity of water to be used for industrial purposes upon the grounds of said lessee, the same not to exceed 428,572,000 gallons annually, for a period of ten years, which is the term of said lease.

From an inspection of said lease, it appears that in consideration for said water to be taken by the lessee under the provisions of said lease, the lessee above named is to pay to the State of Ohio a minimum annual rental of \$1,500.00, payable in semi-annual installments of \$750.00 each, on the first day of May and November of each and every year during the term of said lease, and in addition thereto said lessee is to pay to the State of Ohio with each November payment, an additional rental of 3.5 mills per 1,000 gallons for all water taken by it in excess of the maximum quantity of 428,572,000 gallons therein stipulated.

From an examination of said lease and the provisions therein contained, I find the same to be in conformity with the provisions of Section 14009 and other related sections of the General Code relating to the sale and lease by the state of water and water power in the conduct and operation of the public works of the state, and that the provisions of said lease are not in conflict with the provisions of any of the laws of this state.

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

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

1969.

OHIO REVOLUTIONARY MEMORIAL COMMISSION—AUTHORIZED TO CONTRACT FOR FURNISHING OF MARKERS ALONG MEMORIAL TRAIL.

SYLLABUS:

*Under the provisions of an act of the 88th General Assembly, 113 O. L. 547, the Ohio Revolutionary Memorial Commission is authorized to contract for the furnishing and erecting of markers along the Ohio Revolutionary Memorial Trail.*

COLUMBUS, OHIO, June 12, 1930.

HON. A. D. HOSTERMAN, *Chairman, Ohio Revolutionary Memorial Commission, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Following the action of the Ohio Revolutionary Commission yesterday in Columbus, which you attended, I am now requesting as Chairman of the

Commission that the Attorney General advise me as promptly as possible whether the contract we are to enter into with the Sewah Studios, Marietta, Ohio, for the markers, maps, etc., under their bid, which our Commission yesterday accepted, should under the law and the Legislative Act be made by the Ohio Revolutionary Memorial Commission with The Sewah Studios.

I will appreciate it if you will have this opinion or advice passed on to me as quickly as possible so that with least delay we can have the formal contract entered into and the work started, as time is a very essential element in the progress of our Commission.

The understanding of our Commission has been that the Legislature under the Act passed legally created our Commission as an official body, and in specific terms sets forth the fact that the Commission is specifically to enter into contracts and to do things covered by the Act except in the one case of appropriating property under condemnation proceedings which the Act provides should be by the Director of Public Works.

As soon as I am advised as to the opinion of the Attorney General in this matter, we will then proceed as rapidly as possible to get the contract executed and the work begun."

The Ohio Revolutionary Memorial Commission, of which you are chairman, was created by the 88th General Assembly in an act, known as Amended Senate Bill No. 91, 113 Ohio Laws, 547. Inasmuch as said act is very long and contains many details not connected with your immediate question, it is believed to be unnecessary to quote the entire bill.

Section 1 of the act, after creating the commission, provides that "It shall be the duty of said commission to carry into execution the provisions of this act." Section 2 provides for an "Ohio revolutionary memorial" to consist in part of the Ohio portion of a proposed tri-state "Revolutionary trail." Section 3, after stating that the course of the Ohio revolutionary memorial trail shall be selected by the commission within limitations, reads in part:

"\* \* \* Along said trail *the commission shall erect* at the principal unmarked historic locations such *stone markers*, bronze tablets, monuments, and statutes as in the judgment of the commission are suitable and appropriate, having in view the relative importance of the site or event to be marked or commemorated. \* \* \*"  
(Italics the writer's.)

After mentioning in detail the general line of the trail, the said Section 3 continues:

"\* \* \* *The commission is authorized to erect the following*  
\* \* \*

Approximately 35 monuments or markers with bronze tablets or appropriate inscriptions at points of historic interest along the trail where no suitable marker or monument exists, with at least one marker in each county through which the trail passes, including the following sites, \* \* \*. *The commission may erect* along the trail stone mile posts or other markers of a distinctive and uniform character giving information as to distances to points of historic, geological, archaeological, or scenic interest. Upon request of the commission the director of highways shall assist in the erection and location of such markers, and furnish for such work, equipment, motor trucks, and labor." (Italics the writer's.)

It may be observed that Section 1 makes a general statement charging the commission with the execution of the provisions of the act. Also Section 3, as shown by the *underscored* portion, clearly states that the commission "shall erect," "is authorized to erect," and "may erect" markers. It is true that the last sentence of said Section 3 makes it the duty of the highway director to assist, when requested by the commission, but nowhere is the department of public works or state architect and engineer's office mentioned in the section. It may be argued that, since the Legislature failed to specifically state that the commission may contract for the furnishing and installation of the markers, no such power is granted. However it is a well-known rule of law in Ohio that statutory boards have not only such powers as are expressly granted but as well such implied powers as are necessary to carry the express powers to fruition. Hence the express authority to erect markers carries with it the implied power to contract for their erection.

The above construction is strengthened when Section 6 of the act is considered. In that section, it is provided that if the commission thinks it necessary to condemn property upon which to place said markers, it shall make written request to the superintendent of public works, who shall appropriate the same. Since express authority is here given to the commission to require condemnation proceedings by the public works department and no other powers of supervision are given to said department, it is believed that it was not the intention of the Legislature to delegate such other powers.

Section 154-40, General Code, 112 O. L. 479, reads in part:

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

\* \* \*

(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.

\* \* \*"

The above provision is broad enough to give the department of public works authority to erect monuments, memorials, markers, etc. However, it is a well-known rule of statutory construction that general language in a statute is to be restricted in its interpretation and application when it would otherwise conflict with certain specific provisions of later statutes. See *Central Pub. House vs. Flury*, 25 O. A. R. 214, citing *State vs. Blake*, 2 O. S. 147; *Woodworth vs. State*, 26 O. S. 196; *Doll vs. Barr*, 58 O. S. 113; *Gas Co. vs. Tiffin*, 59 O. S. 420; *Weirick vs. Lumber Co.*, 96 O. S. 386; *Electric Co. vs. Pomeroy*, and *State vs. Industrial Comm.* 105 O. S. 103. It is a further rule of construction that special provisions will control over general provisions. See *Perkins vs. Bright*, 109 O. S. 14, 17.

The powers granted to the department of public works under Section 154-40, General Code, are general powers. The power granted to the revolutionary commission is a special provision which relates to this commission and its duties in connection with the construction of specific markers, etc. It is also later in the order of enactment than Section 154-40, General Code.

In view of the above considerations and discussions, I am of the opinion that under the provisions of an act of the 88th General Assembly, 113 O. L. 547, the Ohio Revolutionary Memorial Commission is authorized to contract for the furnishing of markers along the Ohio Revolutionary Memorial Trail.

Respectfully,

GILBERT BETTMAN,

Attorney General.