

OPINION NO. 80-006

Syllabus:

Neither R.C. 5315.02(B) nor R.C. 1541.081 authorizes the Lake Lands Administrator to enter into a contract to negotiate the sale of lake land which is unquestionably owned by the state.

To: John W. Brown, Administrator, Office of the Lake Lands Administrator, Columbus, Ohio

By: William J. Brown, Attorney General, February 13, 1980

I have before me your request for my opinion which may be stated as follows:

Does the office of the Lake Lands Administrator, under a contract or agreement with the Department of Natural Resources, have the authority pursuant to R.C. 5315.02(B) or R.C. 1541.081, to negotiate the sale of a leasehold when it has been determined by the Department that such land is no longer needed for current or future public use?

You have informed me that the land in question is lake land, as defined in R.C. 1541.06, and further, that there is no dispute or question concerning the title to such land so as to give you the sole authority to negotiate an agreement for sale pursuant to R.C. 5315.03(H). Where there are no conflicting claims as to ownership of state lake lands, such lands are under the control of the Division of Parks and Recreation of the Department of Natural Resources, and may be sold only in accordance with the provisions of R.C. 1541.081. 1980 Op. Att'y Gen. No. 80-005. You inquire, therefore, whether R.C. 5315.02(B) or R.C. 1541.081 authorizes a contract whereby the Lake Lands Administrator may negotiate the sale.

R.C. 5315.02(B) provides that the lake lands administrator may:

(1) Make and enter into contracts and agreements with the director of natural resources, the director of administrative services, or the department of transportation to perform, on behalf of the administrator, any of the work of the administrator which the director is permitted or required by law to do on land or water under his control and which the administrator believes will thereby be performed more conveniently, efficiently, or economically. The directors are hereby authorized to make and enter into such contracts and agreements with the administrator.

This provision permits the Director of the Department of Natural Resources, by contract, to perform any of the duties imposed upon the Lake Lands Administrator pursuant to R.C. Chapter 5315, but does not authorize a contract whereby the Administrator may perform the powers and duties imposed upon the Director by Title 15 of the Revised Code. The Administrator is empowered to make contracts with the Directors of Natural Resources, Administrative Services, and the Department of Transportation for the performance of the duties of the Lake Lands Administrator by the Directors. The last sentence of the statute gives each Director the power to "make and enter into such contracts" (emphasis added) with the Administrator. Clearly, the phrase "such contracts" refers to the agreements for the performance of the Lake Land Administrator's duties.

I turn now to a consideration of R.C. 1541.081, which sets out the procedure by which state lake lands may be sold. R.C. 1541.081 appoints the Chief of the Division of Parks and Recreation as the "agent of the state" for the sale of lake lands not needed for current or future public use, and as you note in your letter, authorizes the Chief to "employ the required appraisers, surveyors, or other personnel whom he deems necessary to accomplish the purposes of [R.C. 1541.081]." This provision gives the Chief of the Division of Parks and Recreation the discretionary power to hire whomever he or she believes necessary to carry out his or her duties in effectuating a sale of lake lands, including the office of the Lake Lands Administrator. It must be determined, however, whether the Lake Lands Administrator has the authority, express or implied, to make contracts for the performance of services with respect to lake lands which are not the object of conflicting claims of title or ownership.

The office of the Lake Lands Administrator is a public body, and as such, may exercise only such powers as have been conferred upon it by statute or the Constitution. See, e.g., State ex rel. Funtash v. Industrial Commission, 154 Ohio St. 497, 96 N.E. 2d 593 (1951). The Lake Lands Administrator is, pursuant to R.C. 5315.03, expressly empowered to execute agreements between claimants to lake lands, and he may also make such "contracts as may be required to carry out his powers and duties, including contracts for the services of consultants, engineers,

and surveyors." R.C. 5315.02(A)(1). The question, then, is whether the contract contemplated with the Chief of the Division of Parks and Recreation is a contract necessary to carry out the powers and duties of the Lake Lands Administrator.

As I stated in Op. No. 80-005, the office of the Lake Lands Administrator was created for "the purpose of resolving and preventing problems of title to lake lands," R.C. 5315.02, and statutes delineating the Administrator's powers must be construed to effectuate this purpose. It may be stated, accordingly, that R.C. 5315.02(A)(1) confers upon the Administrator the authority to make contracts which carry out his duty to prevent and resolve problems of title to lake lands. The Administrator could contract regarding his duty to make surveys and investigations concerning the ownership of lands, see R.C. 5315.03(A)(2), but once it has been determined that there is no question or dispute as to the property's title, R.C. Chapter 5315 confers no further power upon the Administrator in connection therewith. R.C. 5315.02(A)(1) cannot, therefore, be construed as authorizing the Administrator to make contracts whereby he undertakes to perform services in connection with lake lands indisputedly owned by the state. To extend the Lake Lands Administrator's powers over "disputed" lake lands to lands over which there is no dispute would be contrary to the principle of law that statutorily delegated powers cannot be extended by implication. See City of Cincinnati v. Public Utilities Commission, 96 Ohio St. 270, 117 N.E. 381 (1917); 1979 Op. Atty Gen. No. 79-085.

Accordingly, it is my opinion, and you are advised, that neither R.C. 5315.02(B) nor R.C. 1541.081 authorizes the Lake Lands Administrator to enter into a contract to negotiate the sale of lake land which is unquestionably owned by the state.