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BEACH EROSION, CHIEF OF DIVISION—CONSENT AND APPROVAL OF DIRECTOR OF DEPARTMENT OF NATURAL RESOURCES—DIVISION MAY EXPEND STATE FUNDS FOR EROSION AND HARBOR PROJECTS—MAINTENANCE AND REPAIR—REFUGE HARBORS ALONG SHORE OF LAKE ERIE AND BAYS—FUNDS APPROPRIATED BY GENERAL ASSEMBLY—STATE—DELEGATED POWERS—UNITED STATES GOVERNMENT—HARBOR LINES—BREAKWATERS—LINE EXTENDED FROM EXISTING BREAKWATERS TWO MILES IN EACH DIRECTION PARALLEL TO SHORE AND SHORELINE—ARTICLE XVIII, SECTION 7, CONSTITUTION OF OHIO.

## SYLLABUS:

The Chief of the Division of Beach Erosion may, with the consent and approval of the Director of the Department of Natural Resources, expend state funds for erosion and harbor projects and for the construction, maintenance, operation and repair of refuge harbors along the shore of Lake Erie and the bays connected with Lake Erie, where such funds have been appropriated by the General Assembly for such purposes, notwithstanding that such project may be undertaken on littoral or submerged lands lying within or adjacent to municipal corporations to which the State of Ohio has delegated certain powers and duties by virtue of Article XVIII, Section 7, of the Constitution of Ohio, or is located on lands in or adjacent to harbors or bays on Lake Erie in which the United States government has established harbor lines, or is located on lands lying between now existing breakwaters constructed by the United States government and a line extended from such existing breakwaters two miles in each direction, parallel to the shore and the shoreline.

Columbus, Ohio, September 20, 1950

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

Dear Sir:

Your request for my opinion reads as follows:

“Amended Senate Bill No. 13, passed by the 98th General Assembly, transferred the Division of Beach Erosion from the Department of Public Works to the Department of Natural Resources. Sections 412-25 to 412-31, inclusive, of the General Code regulate the functions of this division.

Section 412-28 provides that the division may expend funds

upon erosion and harbor projects and refuge harbors. It may enter into agreements with various political subdivisions for the purpose of constructing such projects. Section 412-29, however, provides that projects cannot be undertaken within or adjacent to municipalities to which the State of Ohio has delegated certain powers and duties.

Section 412-29 also provides that no projects may be undertaken 'in or adjacent to harbors or bays on Lake Erie in which the United States government has established harbor lines or between now existing breakwaters constructed by the United States government and a line, extended from such existing breakwaters two miles in each direction, parallel to the shore and the shore line, \* \* \*'. This section further states, 'provided, however, that nothing in this section shall prohibit the chief of the division of beach erosion from cooperating with a municipality, upon its request so to do, in preventing erosion or improving a harbor within the jurisdiction of such municipality.'

The City of Lorain has requested aid in arresting erosion of the shores at two of its publicly owned parks. The parks are located outside of the harbor and existing breakwaters constructed by the United States Government. They are, however, within two miles of the breakwaters.

The City of Toledo has requested assistance in constructing a bulkhead to prevent erosion of the shore of a publicly owned park. This area is adjacent to Maumee Bay and adjacent to a harbor line established by the United States Government.

Your formal opinion is requested as to whether

(1) Section 412-29 prevents the division from assisting financially in the construction of projects in or adjacent to harbors or bays on Lake Erie in which the United States Government has established harbor lines.

(2) Section 412-29 prevents financial assistance in the construction of projects between now existing breakwaters constructed by the United States Government and a line, extended from such existing breakwaters, two miles in each direction, parallel to the shore and shore line.

(3) If financial assistance cannot be given in (1) and (2), to what extent is the division permitted to cooperate?"

In answer to the questions you have raised, I invite your attention to Section 412-29 of the General Code, as it existed before and after its amendment by Amended Senate Bill No. 13, 98th General Assembly.

Section 412-29 before amendment, read as follows:

"All laws providing for the control and management of the public works of Ohio by the superintendent of public works are

hereby made effective as to the provisions of this act in so far as the same are applicable. Provided however, that such laws shall have no application to littoral and/or submerged lands; (1) within or adjacent to municipal corporations to which the State of Ohio has delegated certain powers and duties by (a) Article 18, Section 7 of the Constitution or (b) the following acts: 107 Ohio Laws 587—(G. C. sections 3699a-3699-9 inclusive), 107 Ohio Laws 581, 111 Ohio Laws 417—(G. C. Sec. 3699-10, 113 Ohio Laws 505; and (2) in or adjacent to harbors or bays on Lake Erie in which the United States government has established harbor lines or between now existing breakwaters constructed by the United States government and a line, extended from such existing breakwaters two miles in each direction, parallel to the shore and the shore line, provided, however, that nothing in this section shall prohibit the superintendent of public works from cooperating with a municipality, upon its request so to do, in preventing erosion or improving a harbor within the jurisdiction of such municipality.”

Section 412-29 after its amendment, read as follows:

“Provided, however, that such laws shall have no application to littoral or submerged lands; (1) within or adjacent to municipal corporations to which the state of Ohio has delegated certain powers and duties by (a) article 18, section 7 of the constitution or (b) the following acts: 107 Ohio Laws 587—sections 3699a-3699-9 inclusive, of the General Code, 107 Ohio Laws 581, 111 Ohio Laws 417—section 3699-10 of the General Code, Ohio Laws 505; and (2) in or adjacent to harbors or bays on Lake Erie in which the United States government has established harbor lines or between now existing breakwaters constructed by the United States government and a line, extended from such existing breakwaters two miles in each direction, parallel to the shore and the shore line, provided, however, that nothing in this section shall prohibit the chief of the division of beach erosion from cooperating with a municipality, upon its request so to do, in preventing erosion or improving a harbor within the jurisdiction of such municipality.”

It will be noted that prior to its amendment Section 412-29, General Code, was clear. It provided that on all projects undertaken by Public Works under the authority of Section 412-28, General Code, that as to these projects the general laws of Ohio, pertaining to the management and control of public works projects would be applicable, except that these general laws would not be applicable to littoral or submerged lands within or adjacent to municipal corporations to which the State of Ohio had delegated certain powers and duties, or on land in or adjacent to

harbors or bays on Lake Erie in which the United States government had established harbor lines, or on land lying between now existing breakwaters constructed by the United States government and a line extended from such existing breakwaters two miles in each direction parallel with the shore and the shore line.

Referring to Section 412-29 as it existed prior to its amendment, it may be seen that the words "such laws shall have no application", refer to general laws established by the General Assembly *for the management and control of public works*, and were not intended to be construed as preventing the construction of public works for the purpose of carrying out erosion projects within or adjacent to municipal corporations, or on lands in or adjacent to harbors or bays in Lake Erie, in which the United States government has established harbor lines or on lands between now existing breakwaters two miles in each direction, parallel with the shore and the shore line.

The meaning of the words "such laws shall have no application", was not altered by the deletion of the first sentence of Section 412-29 from the General Code, and this section contemplates that beach erosion projects of a defined class may still be carried out in a manner different from that established by general law for the management and control of state projects.

That the General Assembly did not intend to prevent the Division of Beach Erosion from carrying out erosion projects within or adjacent to municipal corporations or on lands in or adjacent to harbors or bays in Lake Erie in which the United States government has established harbor lines or on land lying between now existing breakwaters constructed by the United States government and a line extended from such existing breakwaters two miles in each direction, parallel to the shore and the shore line, is further evident from a reading of Section 412-28, General Code, which section was also amended by Amended Senate Bill No. 13, 98th General Assembly, and therefore must be read in *pari materia* with Section 412-29.

Section 412-29 of the General Code, as far as pertinent to the question here under consideration reads as follows :

"\* \* \* The state of Ohio, acting by and through the chief of the division of beach erosion, subject to the provisions of section 412-29 of the General Code, may enter into agreements with counties, municipalities, townships 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. \* \* \*

A municipality or a township, acting by and through the city council, board of public affairs, township trustees, or other legislative body empowered to act for and on behalf of the municipality or township, may enter into and carry out agreements with the chief of the division of beach erosion for the purpose of constructing projects to prevent, correct and arrest shore erosion. \* \* \*

\* \* \* However, if the chief of the division of beach erosion finds it to be to the best interests of the state to construct projects as set forth in this section, by the state of Ohio itself, without the financial contribution of counties, municipalities, townships or conservancy districts, he may construct the projects; the projects so constructed by the state may be financed by appropriations granted by the general assembly. \* \* \*

\* \* \* Subject to the provisions of section 412-29 of the General Code, these refuge harbors may be constructed along the south shore of Lake Erie, upon any river connected with Lake Erie, upon any bay connected with said lake, or upon any island situated on Lake Erie, which are within the boundaries of the state of Ohio. Provided, that if such repair and refuge harbors lie between the shore line and a harbor line established by the United States government so as to interfere with the wharfing out by a littoral owner to navigable waters, such littoral owner shall consent thereto in writing before the location and construction thereof. \* \* \*.”

It is therefore my opinion that the Chief of the Division of Beach Erosion may, with the consent and approval of the Director of the Department of Natural Resources, expend state funds for erosion and harbor projects and for the construction, maintenance, operation and repair of refuge harbors along the shore of Lake Erie and the bays connected with Lake Erie where such funds have been appropriated by the General Assembly for such purposes, notwithstanding that such project may be undertaken on littoral or submerged lands lying within or adjacent to municipal corporations to which the State of Ohio has delegated certain powers and duties by virtue of Article XVIII, Section 7, of the Constitution of Ohio, or is located on lands in or adjacent to harbors or bays on Lake Erie in which the United States government has established harbor lines, or is located on lands lying between now existing breakwaters con-

structed by the United States government and a line extended from such existing breakwaters two miles in each direction, parallel to the shore and the shore line.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.