

177

DEPARTMENT OF NATURAL RESOURCES—WATERWAYS
SAFETY COMMISSION—WATERWAY SAFETY FUND—
1507.63 RC.

1. MONEYS IN FUND NOT APPROPRIATED BY HB 177 (101 GA. 126 O. L. 569) OHIO CONSTITUTION, ARTICLE II, SECTION 22.
2. MONEYS COMING INTO FUND MAY CUMULATE AND BE EXPENDED SUBSEQUENT TO CURRENT BIENNIUM WHEN SO APPROPRIATED.

SYLLABUS:

1. Moneys in the waterways safety fund established by Section 1507.063, Revised Code, House Bill No. 177, One Hundred First General Assembly, 126 Ohio Laws 569, have not been appropriated and are not available for expenditure in the current biennium ending June 30, 1957.

2. Moneys coming into the waterways safety fund may be permitted to cumulate from year to year and such cumulation of moneys may be expended in whole or in part in any biennium subsequent to the current biennium when the general appropriation act includes an appropriation of all moneys to the credit of existing rotary funds.

Columbus, Ohio, March 4, 1957

Mr. A. F. Wakefield, Chairman, Waterways Safety Commission
Ohio Department of Natural Resources
Columbus, Ohio

Dear Sir:

Your request for my opinion raises the following questions:

1. Are moneys in the waterways safety fund created by Section 1507.063, House Bill No. 177, One Hundred First General Assembly, 126 Ohio Laws 569, available for expenditure in the biennium ending June 30, 1957?

2. May moneys coming into the waterways safety fund be permitted to cumulate from year to year and then be expended when the fund becomes sufficiently large to achieve the purposes prescribed for it?

As to the first question, you are aware that Section 6 of the General Appropriation Act of the One Hundred First General Assembly, House Bill No. 929, did not appropriate moneys from the waterways safety fund because that act appropriated only moneys to the credit of *existing* rotary funds, and House Bill No. 177 postdates House Bill No. 929 so that this fund was not in existence at the time of the General Appropriation Act. Therefore, if the moneys in the fund have been appropriated for the current biennium it must be by virtue of provisions of law outside the General Appropriation Act. The only other possible appropriation of those moneys is found in Section 1507.04, Revised Code, another section of House Bill No. 177. Section 1507.04, Revised Code reads as follows:

“The chief of the division of shore erosion, with the consent and approval of the director of natural resources, may expend

upon erosion such funds as are appropriated by the General Assembly, and in addition, a sum of money equal to the funds derived from the granting of permits authorized by section 1507.03 of the Revised Code, and with the consent and approval of the director of natural resources, may expend for the construction, maintenance, operation and repair of refuge and light draft vessel harbors on the navigable waters within the state, such funds as are appropriated by the General Assembly for such purposes, and in addition, a sum of money equal to the funds derived from the rentals, fees and charges as provided in section 1507.06 of the Revised Code and monies accruing from the waterway safety fund as provided in sections 5736.01, 5736.02, 5736.03, 5736.99, 1507.061 (1507.06.1), 1507.062 (1507.06.2), 1507.063 (1507.06.3) and 1507.064 (1507.06.4) of the Revised Code.”

Does that language serve as an appropriation under the terms of Section 22 of Article II of the Constitution of Ohio? The constitutional provision reads :

“No money shall be drawn from the treasury except in pursuance of a specific appropriation, made by law ; and no appropriation shall be made for a longer period than two years.”

In Opinion No. 3437, Opinions of the Attorney General for 1954, page 20, my predecessor said at page 23 :

“* * * a power to spend public funds bestowed in a general statute is not self executing and requires the implementation of an appropriation sufficiently broad in terms as to comprehend the statutory power and sufficiently specific as to satisfy the requirements of Article II, Section 22, Ohio Constitution, *supra*.”

Section 1507.04, Revised Code, confers upon the chief of the division of shore erosion the power to expend prescribed funds when they are appropriated. It does not of itself constitute an appropriation. The very language of the statute, mentioning future appropriations, denies any intention on the part of the General Assembly that the statute should of itself constitute an appropriation.

It is my opinion, therefore, that moneys in the waterways safety fund are not appropriated and are not available for expenditure in the current biennium, ending June 30, 1957.

Turning to your second question, as to whether moneys in the fund may be permitted to cumulate from year to year and then be expended

when the cumulation is sufficiently large for the purposes of the fund, I refer you to Section 6 of the General Appropriation Act, *supra*. That section reads, in pertinent part :

“All moneys to the credit of existing rotary funds are hereby appropriated and all existing rotary funds except as otherwise herein provided are hereby continued in effect for the full period during which this act is effective.

This section which is enacted as part of each biennial appropriation act re-appropriates all moneys in existing rotary funds. Thus funds cumulated therein are appropriated as a whole for each biennium and may be expended as necessity requires.

It is my opinion, and you are advised :

1. Moneys in the waterways safety fund established by Section 1507.063, Revised Code, House Bill No. 177, One Hundred First General Assembly, 126 Ohio Laws 569, have not been appropriated and are not available for expenditure in the current biennium ending June 30, 1957.

2. Moneys coming into the waterways safety fund may be permitted to cumulate from year to year and such cumulation of moneys may be expended in whole or in part in any biennium subsequent to the current biennium when the general appropriation act includes an appropriation of all moneys to the credit of existing rotary funds.

Respectfully,
WILLIAM SAXBE
Attorney General