

OPINION NO. 88-010**Syllabus:**

The Adjutant General may, with the approval of the Governor, and in accordance with R.C. 5913.09, lease military property at Camp Perry. (1918 Op. Att'y Gen. No. 1332, vol. I, p. 939, overruled).

To: Richard C. Alexander, Adjutant General, Worthington, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 29, 1988

I have before me your predecessor's request for my opinion on the question of whether the Adjutant General may lease portions of Camp Perry. The request letter refers to 1918 Op. Att'y Gen. No. 1332, vol. I, p. 939. In that opinion one of my predecessors concluded that the Adjutant General did not have authority to lease Camp Perry. Your predecessor's request asks that I reconsider 1918 Op. No. 1332.

R.C. 5913.09 makes the Adjutant General "the custodian of all military property, both real and personal, belonging to the state," and goes on to provide that:

He may make such changes and improvements in such property as the needs of the state and the exigencies of the service require. All improvements made upon such property belonging to the state, from monies received either all or in part from the state, become the property of the state. *The adjutant general may, with the approval of*

the governor, lease, license, or rent military property of the state upon such terms and under such conditions as the adjutant general considers appropriate and proper. Except as otherwise provided in this section, all receipts from any military property of the state, not made a portion of the company, troop, battery, or other organization funds by regulations, shall be credited to the funds for the maintenance of the Ohio national guard, Ohio naval militia, or the Ohio military reserve, as the adjutant general directs. All income received from seasonal rental units and recreational facilities at Camp Perry shall be paid into the state treasury to the credit of the Camp Perry clubhouse and rental activities fund, which is hereby created. (Emphasis added.)

This statute expressly grants the Adjutant General the authority to lease military property with the approval of the Governor.

While R.C. 5913.09 does not specifically state that Camp Perry is "military property," a review of the legislative history of R.C. 5913.09 reveals that it is. R.C. 5913.09 was amended in 1959 to expand the authority of the Adjutant General beyond mere custodianship of military property by adding the language that "[t]he adjutant general may, with the approval of the governor, lease, license or rent military property of the state..." 1959 Ohio Laws 1295 (Am. Sub. H.B. 1118, eff. August 1, 1959). Section 3 (uncodified) of Am. Sub. H.B. 1118 specifically provides:

That [this] act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that its enactment into law at the earliest possible time will permit the leasing of Camp Perry as a site upon which to hold the national rifle matches for a sum of four hundred fifty thousand dollars and will in addition provide yearly federal assistance thereafter. (Emphasis added.)

Thus, since the express purpose of Am. Sub. H.B. 1118 was to authorize the Adjutant General to lease Camp Perry, I conclude that the phrase "military property of the state" as used in R.C. 5913.09 includes Camp Perry.

The express reference in R.C. 5913.09 to the rental of seasonal rental units and recreational facilities at Camp Perry was added by amendment in 1981. 1981-1982 Ohio Laws Part II, 3460 (Am. Sub. H.B. 694, eff. November 15, 1981). With that amendment, the Camp Perry clubhouse and rental activities special account was created. However, the express reference to seasonal rental units and recreational facilities does not, in my view, limit the Adjutant General's authority to lease Camp Perry just to seasonal rental units and recreational facilities. *Cf. State v. Wells*, 146 Ohio St. 131, 64 N.E.2d 593 (1945) (noting that the doctrine of *ejusdem generis* is not to be employed in any case to subvert a meaning clearly expressed or to defeat the plain intent of the General Assembly). Rather, since it is clear from Am. Sub. H.B. 1118, section 3 (uncodified), that all of Camp Perry was intended to be included as "military property of the state" for purposes of R.C. 5913.09, I conclude that the Adjutant General may, with the approval of the Governor, lease any lands at Camp Perry. Based upon the amendment to R.C. 5913.09 contained in Am. Sub. H.B. 1118, it is also clear that 1918 Op. No. 1332 is no longer a correct statement of the law and should be overruled.

Therefore, it is my opinion, and you are hereby advised, that the Adjutant General may, with the approval of the Governor, and in accordance with R.C. 5913.09, lease military property at Camp Perry. (1918 Op. Att'y Gen. No. 1332, vol. 1, p. 939, overruled).