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DIVISION OF PARKS—LEASING OF STATE-OWNED PROPERTY UNDER 1541.08 RC—ANNUAL RENTAL, VALUATION UNDER SAID SECTION; *EXCEPT* WHERE ASSESSMENT HAS BEEN MADE BY COUNTY AUDITOR UNDER REVALUATION PROVIDED FOR BY 5713.01 RC—USE OF AUDITOR'S VALUATION TO DETERMINE RENTS UNDER 1541.08 RC.

SYLLABUS:

The Division of Parks, when it leases State-owned lands pursuant to the authority vested in it under Section 1541.08, Revised Code, may appraise such lands to determine the basis of the annual rental under the formula provided in such section except that where an assessment of such lands has been made by the county auditor in the course of a sexennial revaluation, as provided in Section 5713.01, Revised Code; the valuation fixed by the county auditor should be used for such purpose.

Columbus, Ohio, February 14, 1957

Department of Natural Resources
Columbus, Ohio

Gentlemen :

I have for consideration your request for my opinion which reads in pertinent part as follows :

“May the Ohio Department of Natural Resources, Division of Parks, when it leases State-owned lands pursuant to Section 1541.08, Revised Code of Ohio, appraise such lands and thereafter provide in the lease that the lessee shall pay the State of Ohio a specified sum of money as the annual rental, which such of money would be six per cent of the valuation of such lands as determined by the Division of Parks?”

Section 1541.08, Revised Code, reads in part as follows :

“State lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake, Lake Loramie, or the Portage Lakes may be leased. The division of parks may lease such lands, including marginal strips and marshlands around said lakes, the outer slopes of artificial embankments, islands, borrow pits, and state lands adjacent thereto as it deems proper to responsible parties. Such leases shall be for a term of not less than fifteen years or multiples thereof. The annual rental shall be six percent of the appraised actual value of such lands. Such lands shall be reappraised at the same time and by the same authority as the reappraisal of the real estate of the county is made for tax purposes, and it shall be the duty of the board of tax appeals to furnish to the division of parks the most recent appraised values of the state owned lands described in this section. The division of parks shall pay to the county auditor of the respective counties wherein the state owned lands are located the sum of ten per cent of the proceeds of the annual rentals derived from the leases.

“Leases which have been executed under the provisions of statutes governing the leasing of canal lands, and which have been continuously renewed upon the dates of expiration, shall be renewed in the same manner as provided in the statutes which governed the execution of the original leases.”

Prior to its amendment, effective November 7, 1953, this section read as follows :

“No state lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, Guilford Lake, or The Portage Lakes shall ever be sold. The division of parks may lease such lands, including marginal strips and marshlands around said lakes, the outer slopes of artificial embankments, islands, borrow pits, and state lands adjacent thereto as it deems proper, under the laws governing the leasing of canal lands.”

One of the statutes relating to the lease of canal lands is Section 123.62, Revised Code. This section reads in part:

“Every tract of land, and any part of the berm bank of any canal, canal basin, reservoir, and outer slope of the towing path embankment, which the director of public works finds to be the property of the state, the use of which, in the opinion of said director, if leased, would not materially injure or interfere with the maintenance and navigation of any of the canals of this state, shall be valued by the director at its true value in money. If such land is not then under an existing lease, it may be leased for any purpose other than for railroads operated by steam.”

Also pertinent to the leasing of canal lands is Section 123.63, Revised Code, which reads in part:

“If the land referred to in section 123.62 of the Revised Code is not in the possession of any person or corporation having buildings or other valuable structures thereon, it may be immediately leased for fifteen years, at an annual rental of six per cent per annum of the valuation fixed by the director of public works, to be paid semi-annually in advance, and at such place as said director fixes by the terms of said lease. * * *”

Referring back to the provisions of Section 1541.08, Revised Code, as it existed prior to the amendment of November 7, 1953, it will be seen that “the Division of Parks” was authorized to lease such lands, but in doing so should proceed “under the laws governing the leasing of canal lands.” It seems clear to me that this provision had the effect of making the laws governing the leasing of canal lands applicable to the leases here involved in all respects except that the Division of Parks was to be substituted for the Director of Public Works in (1) the fixing of the valuation for the purposes of computing the annual rental and (2) for the purpose of actually executing the lease on behalf of the state.

With this point in mind, we may proceed to examine the seemingly conflicting provisions of existing Section 1541.08, Revised Code, which have been quoted in part above.

It will be noted that in the first paragraph in this section that no provision is made for the initial appraisal of the lands in question, but that definite provision has been made for the reappraisal of them; and it is quite plainly provided that the reappraisal is to be made "by the same authority as the reappraisal of real estate of the county is made for tax purposes." This authority is, of course, the county auditor, as provided in Section 5713.01, Revised Code, and it is my view that the "reappraisal" thus referred to is the general reappraisal which the auditor is required to make sexennially, rather than the so-called continuous reappraisal which that officer is expected to make "at any time" when he finds a parcel to be valued at other than true value in money.

The inconsistency to which I have alluded becomes apparent when this reappraisal provision is considered in relation to the final paragraph in Section 1541.08, Revised Code, in which it is provided that leases which have been executed under the provisions of laws relating to the leasing of canal lands, and have been continuously renewed, are to be renewed "in the same manner as provided in the statutes which governed the execution of the original leases."

If we were to give literal effect to this provision in the final paragraph of Section 1541.08, *supra*, it would mean that the reappraisal, upon renewal of the lease, would be made as provided in the statutes relating to the leasing of canal lands; and as we have noted, such statutes, construed in relation to the earlier provisions of Section 1541.08, *supra*, placed with the Division of Parks the authority to make such valuation.

It would seem, however, that one of the primary objectives of the amendment of this section, effective November 7, 1953, was to place with the county auditor, the duty to reappraise these lands sexennially and as a compensation for such services, the payment to the county auditor the sum of 10 per cent of the proceeds of the annual rentals which the statute derives from the leases.

It is thus to be seen that if we were to give literal effect to the provisions noted in the final paragraph of this section, the primary legislative objective would be defeated, *i.e.*, no division of the rental as between the county and state would be accomplished.

There is, of course, an established rule of statutory construction that all parts of statutes should be so construed as to give effect to all of them so far as it is possible to do so. Such a construction is possible in the

case at hand if the final paragraph of Section 1541.08, should be deemed to provide for a renewal, as to the cases therein mentioned, in the same manner as provided by statutes governing the execution of the original leases and, except where a reappraisal has been accomplished by the auditor in the course of a sexennial revaluation, the parcels in question should be valued by the Division of Parks.

Accordingly, in specific answer to your inquiry, it is my opinion that the Division of Parks, when it leases State-owned lands pursuant to the authority vested in it under Section 1541.08, Revised Code, may appraise such lands to determine the basis of the annual rental under the formula provided in such section except that where an assessment of such lands has been made by the county auditor in the course of a sexennial revaluation, as provided in Section 5713.01, Revised Code, the valuation fixed by the county auditor should be used for such purpose.

Respectfully,
WILLIAM SAXBE
Attorney General