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APPROVAL—PERMIT, STATE OF OHIO, THROUGH DIRECTOR, DEPARTMENT OF PUBLIC WORKS, WITH HOLST BUILDER'S SUPPLY COMPANY, TOLEDO, OHIO, TO REMOVE SAND AND GRAVEL FROM THE BED OF LAKE ERIE AT DESIGNATED AND DESCRIBED LOCATIONS, AT FIVE CENTS PER CUBIC YARD BULK MEASURE.

COLUMBUS, OHIO, June 13, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a certain written permit in triplicate executed by you as Superintendent of Public Works for and on behalf of the State of Ohio and in and by which Holst Builder's Supply Company of Toledo, Ohio, is permitted to remove sand and gravel from the bed of Lake Erie at the locations and within areas designated and described in said instrument. By the terms of this instrument this permit is to be effective for the year 1938 from and after the approval of the same by the Governor and the Attorney General and the royalties to be paid by the permittee above named as compensation for the sand and gravel removed by it under the permit is five cents per cubic yard bulk measure.

This permit is one executed by you under the authority of Section 5 of Substitute Senate Bill No. 236 enacted under date of May 21, 1935, 116 O.L., 244; the provisions of which act have been carried into the General Code by designation of the Attorney General as Sections 412-24 to 412-33, inclusive. Section 5 of this act (Sec. 412-28, G. C.) provides in part as follows:

"Subject to the limitations set forth in Section 6 of this act, authority is hereby granted to the superintendent of public works to issue permits, subject to the approval of the governor and attorney general, to parties making application therefor, for permission to take and remove sand, gravel, stone, minerals and other substances from the bottom of said lake, either upon a royalty basis or for a fixed annual rental as they may deem for the best interests of the state; said permits for sand, gravel, stone, minerals and other substances, shall be issued for terms of not less than one nor more than ten years, to be taken within certain fixed boundaries that do not conflict with the rights of

littoral owners. Upon request from the holder of such permit, the same shall be cancelled, but any equipment or buildings owned by the lessee shall be held as security by the superintendent of public works for payment of all rentals or royalties due the State of Ohio at the time of application for cancellation."

Upon examination of this written permit and the provisions and conditions therein contained, I am of the opinion that this permit and the terms thereof are in conformity with the provisions of the act of the legislature above referred to, save and except that the location of one or more of the areas described in this permit from which said company is permitted to take and remove sand and gravel may be such that the subaqueous lands in question or a part of the same may to some extent be under the control of the city of Toledo under the Fleming Act, so-called (Secs. 3699a to 3699-10, inclusive, G. C.), and other later enactments purporting to confer certain rights on municipal corporations with respect to the harbor lands of Lake Erie. In this view, depending upon the facts as to the actual location of the sand and gravel areas here in question, it may be necessary to secure the consent of the city of Toledo to the taking and removal of this sand and gravel. Likewise, it is noted that one of the areas here in question seems to be in the Maumee River and pretty well up from the mouth of the river where the same empties into Maumee Bay. In this situation, it is possible, depending upon the facts as they may be, that the riparian owners along the river opposite to this area may have some rights in the premises that should be reckoned with. However, I am unable to express any opinion with respect to the respective rights, if any, of the city of Toledo and of said riparian owners, respectively, by reason of the circumstances that the facts relating to these matters are not sufficiently determined. However, I assume that if under the facts as they exist, it is necessary for the permittee above named to obtain additional consents to the taking and removal of this gravel, no difficulty will be encountered in obtaining the same.

I find that this permit has been properly executed by you, acting for and on behalf of the State of Ohio, and by the permittee above named, acting by the hand of its President pursuant to the authority conferred upon him by a resolution of the Board of Directors of said company. Subject only to the suggested matters above referred to, I am approving the permit and the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*