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1. WATER — SUPERINTENDENT OF PUBLIC WORKS — AUTHORIZED, SUBJECT TO WRITTEN APPROVAL OF GOVERNOR, TO DRILL WELLS, CONSTRUCT RESERVOIR AND PIPE LINES FROM WELLS TO RESERVOIR — MAY SELL OR LEASE SUCH WATER TO MANUFACTURING PLANTS — SECTIONS 412-1 TO 412-15 G.C.
2. EXPENSE, TO CONSTRUCT SUCH IMPROVEMENT MAY BE BY ISSUANCE OF REVENUE BONDS OR BY GRANT OF FEDERAL FUNDS.
3. MANAGEMENT AND OPERATION — JURISDICTION, SUPERINTENDENT, PUBLIC WORKS.

SYLLABUS:

1. Sections 412-1 to 412-15, inclusive, General Code, authorize the Superintendent of Public Works, subject to the written approval of the Governor, to drill wells, construct a reservoir and pipe lines from such wells to such reservoir, and sell or lease the water obtained thereby to manufacturing plants.

2. The expense of constructing such improvement may be financed by the issuance of revenue bonds as provided in Sections 412-1 to 412-15, inclusive, General Code, or by a grant of federal funds made to the state for such purpose.

3. The management and operation of such improvement, when completed, will be under the Superintendent of Public Works.

Columbus, Ohio, April 6, 1942.

Hon. Frank L. Raschig, Superintendent of Public Works,
Columbus, Ohio.

Dear Sir:

Your request for my opinion reads:

“An industrial area in this state is seriously confronted with the necessity of securing additional water for the prosecution of the businesses located in this district. Most of these plants are engaged in the present war effort.

We believe that the situation could be alleviated by drilling wells and then pumping the water from these wells through pipe lines to a reservoir to be located in some central position in

this industrial area so that the manufacturers may have additional water which is a vital necessity in the operation of their businesses.

Kindly advise us if in your opinion there is sufficient authority vested in this department in General Code Section 412-1 to 412-15, inclusive, to construct and operate a reservoir and water supply system as above outlined, and to sell or lease for commercial and manufacturing purposes the water made available by such improvement.

May the state of Ohio accept an outright grant of federal monies conditioned upon the Superintendent of Public Works constructing the improvement, which, when constructed, to be under the sole jurisdiction of the Superintendent of Public Works."

The provisions of the act containing Sections 412-1 to 412-15, inclusive, General Code, were summarized by Jones, J., in *Kasch v. Miller*, 104 O.S., 281, 284, 285, as follows:

"The act comprised fifteen subsections of the General Code. Briefly stated, in its general outlines, it authorized the superintendent of public works, subject to the approval of the governor, to acquire property for the construction of reservoirs, dams, etc., for the purposes named in the first section of the act. It empowered the superintendent with authority to prepare and submit to the governor for approval plans, specifications and estimates for construction. Upon approval by the governor the superintendent was required to proceed with the construction of the improvements, and was authorized to 'issue and sell bonds of the state of Ohio, not in excess of the estimated cost of such improvements,' which bonds were not to mature later than twenty-five years from the date of the issue. After the sale of the bonds, and payment of the proceeds, the superintendent was empowered to make contracts for construction, which should not exceed the estimated cost of the improvement, together with the cost of the land acquired and damages resulting therefrom. The improvements, including said contracts, were to be paid for out of the proceeds from the sale of the bonds. The superintendent was authorized to sell or lease for a period of twenty-five years the water or power generated thereby, and to impound the funds derived from the sale or rental thereof in the hands of the state treasurer, which funds were expressly pledged for the purposes of maintaining the improvements, and for the payment of interest and principal on the bonds as they might mature. The owners of the bonds were given a lien on such improvements, and on certain default in payments thereon they were authorized to foreclose their liens. The purchaser at foreclosure sale, under the provisions of the act, acquired the interests of the state and bondholders in the improvements for a period of twenty-five years, with the right to conduct water and power during that period over the

lands, channels, etc., of the state. During that time the purchaser at foreclosure sale was required to maintain the improvements in a good state of repair, and refrain from interfering in any wise with certain specific rights of navigation, control and maintenance reserved to the state."

The first section of the act, which is Section 412-1, General Code, in so far as it is pertinent to your inquiry, provides:

"That, in addition to all other powers granted to and duties devolving upon the superintendent of public works, as provided by law, when in his judgment he deems it for the public welfare and the best interests of the citizens of the state, that the surplus, flood and other waters of any of the watersheds, rivers, streams, water courses or public waters should be conserved, impounded and stored in order to insure and promote the public health, welfare and safety, and to encourage and promote agriculture, commerce, manufacturing and other public purposes, he shall proceed as provided by law, and in furtherance of the purposes of this act and the preservation of the use of such waters for navigation in case the same shall be required therefor, to construct such reservoirs, dams, storage basins, dikes, canals, raceways and other improvements as may be necessary for such purposes, or he may make additions to, enlarge and make alterations in and upon such reservoirs, dams, storage basins, dikes, canals, raceways, and other improvements, then in existence and constituting a part of the public works, as may be necessary for such purposes; but no rights or privileges herein granted shall in any wise interfere with the control and maintenance of the state reservoirs or public parks which have been dedicated to the public for purposes of recreation and pleasure."

An analysis of this language shows that the Superintendent of Public Works may, when in his judgment he deems it for the public welfare and the best interests of the citizens of the state, proceed as provided by law to construct reservoirs, dams, storage basins, dikes, canals, raceways and other improvements when (1) the surplus, flood and other waters of the water-sheds, rivers, streams, water courses or public waters should be conserved, impounded and stored in order to insure and promote the public health, welfare and safety, or (2) to encourage and promote agriculture, commerce, manufacturing and other public purposes.

The section does not in terms authorize the Superintendent of Public Works to drill wells or construct pipe lines. Nevertheless, he is authorized to construct reservoirs, canals, etc., and other improvements.

Under the rule of construction known as *eiusdem generis*, the term "other improvements" must be considered as meaning "other similar improvements." In other words, I believe that the language of the section is sufficiently broad to authorize the Superintendent of Public Works to construct improvements which are hydraulic in character, even though such improvements are not specifically mentioned in the section, and I am therefore of the opinion that wells and pipe lines are comprehended by the language "other improvements."

Certainly, the purposes for which the proposed improvements are to be made are within the scope of the act. You state that the waters are to be used by industrial plants, most of which are to be engaged in the present war effort. The section provides that one of the purposes of such improvements is to "promote manufacturing and other public purposes." The proposed improvements will not only serve to promote manufacturing but they will also be of vital assistance to the prosecution of the present war. This is unquestionably a public purpose of the highest order.

In *Trustees of Cass Township v. Dillon*, 16 O.S., 38, 41, it was said by White, J.:

"The state has a deep interest in the preservation of the government of the United States in all its integrity and power; and when endangered in war by a hostile power, the state government may, within the bounds of its own constitutional powers, aid in its preservation, and, in so doing, is but in the exercise of the legitimate powers of self-defense."

The power to sell or lease the water which will be made available by the proposed improvements is contained in Section 412-5, General Code, which provides:

"The superintendent of public works shall, by contract, in writing, sell or lease, to be used for agricultural, commercial, manufacturing or other lawful purposes, for any term not exceeding twenty-five years, the water, or any part thereof, conserved and stored by such improvement or improvements then existing, or that will be conserved and stored by any such improvements thereafter to be constructed by him, as shown by the plans and specifications prepared by him therefor, and approved by the governor of the state, as herein provided, for a certain price or rental for the water furnished to or used by such grantees, lessees or their assigns, to be paid quarterly, semi-annually or annually as he may deem advisable.

Said superintendent of public works may, for a term not exceeding twenty-five years, sell or lease power generated by any head of water raised or maintained by any such improvements, or he may sell or lease the right to use such head of water for generating power or other hydraulic purposes. All such contracts of sale or lease, whether for water or power, shall contain such reservations or restrictions as the superintendent of public works may deem necessary and proper, in furtherance of the purposes of this act and the preservation of the use of such waters for navigation in case the same shall be required therefor.

As to their general form and legality, such contracts or leases must be approved by the attorney general and, before becoming binding obligations on the state of Ohio, they shall be approved by the governor, by his written endorsement thereon."

This section clearly authorizes the Superintendent of Public Works to sell or lease the water or any part thereof which will be made available by the improvements, subject to the written approval of the Governor.

You also ask whether the state of Ohio may accept an outright grant of federal funds conditioned upon the construction by the Superintendent of Public Works of these improvements, which, when constructed, shall be under the sole jurisdiction of the Superintendent of Public Works. Although you do not state that the federal funds so granted are to be expended in constructing the proposed improvements, I assume that you mean that such condition would be attached to the grant by the federal government. Section 18 of the General Code provides:

"The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

This section authorizes the state of Ohio to accept gifts of money and to hold and apply the same subject to the terms and conditions of such gifts.

In addition, your attention is invited to the last paragraph of Section 2 of House Bill No. 665 of the Ninety-fourth General Assembly, which provides:

“All revenues received from the federal government by the state of Ohio, or any of its departments or divisions, are hereby appropriated for the purpose for which allotted.”

Since the Superintendent of Public Works is authorized to make the improvements as outlined in your letter, finance the same through the issuance of revenue bonds and sell or lease the water resulting therefrom, and since the state of Ohio may accept gifts of money upon condition, a fortiori, the Superintendent of Public Works may use federal funds for making such improvements where such federal funds have been granted upon condition that the improvement be made and that such federal funds be expended in making same and the Superintendent of Public Works could, of course, sell or lease the water derived therefrom.

By reason of the provisions of Section 12 of Article VIII of the Constitution of Ohio and Chapter D of Division II of Title III of Part First of the General Code of Ohio, the construction, as well as management and control, of such improvements would be under the jurisdiction of the Superintendent of Public Works.

In passing, I deem it appropriate to mention that the act comprising Sections 412-1 to 412-15, inclusive, General Code, has been held in *Kasch v. Miller*, supra, not to violate any of the provisions of the Constitution.

I am therefore of the opinion that the Superintendent of Public Works has authority under the provisions of Sections 412-1 to 412-15, inclusive, General Code, to construct and operate improvements of the nature mentioned in your letter and to finance such improvements as provided in such sections, and further to sell or lease the water therefrom for manufacturing purposes. I am also of the opinion that the state of Ohio may accept a grant of funds from the federal government, which grant is conditioned upon the use of such funds in the construction of improvements of the nature mentioned in your letter and that the Superintendent of Public Works may use such funds so granted to construct such improvements which will be under his management and control when completed.

Respectfully,

THOMAS J. HERBERT

Attorney General.