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PERMIT—STATE WITH JAMES SCANES BOAT AND DOCK, TOLEDO, TO REMOVE SAND AND GRAVEL, DESIGNATED AREAS, MAUMEE RIVER AND MAUMEE BAY, TOLEDO.

COLUMBUS, OHIO, March 9, 1939.

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 to James Scanes Boat and Dock of Toledo, Ohio, by the terms of which said permittee is given the right to take and remove sand and gravel from certain subaqueous lands in areas therein described in and during the calendar year 1939. The areas from which sand and gravel may be taken under this permit are:

(1) Being an area in the Maumee River extending from about 23,500 feet upstream of the Fassett Street Bridge at Toledo, to about 3,500 feet upstream of that bridge.

(2) Being a circular area about 2,500 feet in diameter in Maumee Bay and located 2,000 feet northeasterly of Turtle Island.

This permit is one executed by you as Superintendent of Public Works under the authority of Substitute Senate Bill No. 236, enacted by the 91st General Assembly under date of May 21, 1935, 116 O. L., 244. Section 5 of this Act, in so far as the same pertains to permits of this kind, provides:

“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 per-

mission 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."

This permit as a written instrument has been properly executed by the State of Ohio, acting through you as Superintendent of Public Works, and by James Scanes Boat and Dock, the permittee therein named, and the provisions of the instrument specifying the royalties to be paid by said permittee to the State of Ohio for such sand and gravel taken by it under this permit and prescribing the further terms and conditions with respect to the removal of such sand and gravel and designating the means for determining the amount of royalties to be paid therefor, are such as have proper relation to permits of this kind issued by you under the authority of the section of said Act above referred to. In this connection, it is noted, however, that the authority granted to you as Superintendent of Public Works to issue permits of this kind under Section 5 of said Act is by said section made subject to the pertinent provisions of Section 6 of this Act. Section 6 of said Act, as you will note, refers to the Fleming Act, so-called, and to other acts of the legislature giving to municipal corporations situated on the harbors of Lake Erie certain rights in the littoral and subaqueous lands in such harbors. Although I am approving this written permit as to execution and form, I am not in this opinion presuming to pass upon the question of the respective rights of the State of Ohio, of the City of Toledo and of persons and corporations who may own uplands along the Maumee River opposite to the areas from which sand and gravel is to be taken and removed under this permit. But as to this, I assume that as in years past the permittee hereinabove named will conduct its operations in such manner as to meet the approval of the City of Toledo and of all other parties concerned, including, of course, the United States Government which exercises paramount rights over the land and water areas of Maumee Bay and Maumee River for navigation purposes.

Subject to the observations here made, I am approving this permit as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*