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MONEY—SUPERINTENDENT OF PUBLIC WORKS—SAND
AND GRAVEL PERMITS—MONEY PAID TO STATE
TREASURER—EXPENDITURES FOR SHORE EROSION
PREVENTION—APPROPRIATION.

SYLLABUS:

Moneys received by the Superintendent of Public Works for sand and gravel permits issued by him under the authority of Substitute Senate Bill No. 236, 116, O. L., 244, should be paid by him into the State Treasury in the manner provided by Section 24 of the General Code.

Such moneys cannot be expended for shore erosion prevention or for any of the other projects provided for in said Act, without an appropriation by the legislature of these moneys for the purposes above stated.

COLUMBUS, OHIO, October 13, 1937.

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

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you state that you have received the sum of \$3,000.00 as royalties on permits issued by you as Superintendent of Public Works to certain dredging companies for the privilege of taking sand and gravel from the bed of Lake Erie, as provided for in Substitute Senate Bill No. 236, 116 O. L., 244, and that you expect to receive other and much larger sums of money on these and other permits issued by you for this purpose. I am advised that you have deposited this sum of \$3,000,000 in the State Treasury where it is now held in a depository trust fund to the account of your department pending a determination of the question of the proper disposition of the money; and in this connection you request my opinion upon the question whether this money and other like moneys hereafter received by you can be deposited in the State Treasury to the credit of "the Lake Erie Beach Shore Erosion and Harbor Improvement Fund" of your department and can be expended for shore erosion prevention and for harbor improvements as provided for in said Act upon allotment of such moneys for these purposes by the Director of Finance and the Board of Control without a specific appropriation of these moneys by the General Assembly for the purposes above stated.

The Act above referred to is one "To create within the department of public works of Ohio, a division to have charge of matters

pertaining to beach and shore erosion projects, and to authorize the superintendent of public works of Ohio to assist in arresting beach and shore erosion and to make harbor improvements along the shores of Lake Erie within the state of Ohio, (and) to provide funds therefor." By Section 1 of this Act, the Superintendent of Public Works is authorized and directed to act as the erosion agency of the state of Ohio for the purpose of co-operating with the Beach Erosion Board of the United States War Department provided for by section 2 of the "River and Harbor Act," adopted by the Congress of the United States and approved July 3, 1930. By sections 2 and 3 of this Act, it is provided that the Superintendent of Public Works in the discharge of his duties under the terms and provisions of the Act, may call to his assistance, temporarily, any engineers or other employes in his department or in any other state department, or in any state aid educational institution for the purpose of making studies, surveys, maps and plans for the purpose of devising effective and economical methods of arresting and preventing erosion along the shore lines of Lake Erie and its connecting bays; and that such engineers or other employes shall be entitled to their necessary expenses while working under the direction of the Superintendent of Public Works on erosion and harbor projects, "which are to be considered as part of the public works of the state of Ohio." In this connection, it is further noted that by section 6 of said Act all laws providing for the control and management of the public works of Ohio by the Superintendent of Public Works are made effective as to the provisions of this Act in so far as the same are applicable, except as to littoral and submerged lands within or adjacent to municipal corporations which are governed by other acts therein referred to and which are not at all important with respect to any of the questions here presented.

As a consideration more immediately pertinent with respect to the questions at hand, section 5 of this Act grants to the Superintendent of Public Works authority to issue permits, subject to the approval of the Governor and the Attorney General, to parties making application therefor, for permission to take and remove sand, gravel, stone, minerals and other substances from the bottom of Lake Erie, either upon a royalty basis or for a fixed annual rental as may be deemed to be for the best interests of the State. This section further provides that such 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.

Further touching the questions here presented, this section of the Act provides that the Superintendent of Public Works may ex-

pend upon erosion and harbor projects along the shores of Lake Erie, and its connecting bays, such funds as may be appropriated by the General Assembly from time to time for such purposes, and in addition, a sum of money equal to the funds derived from the granting of the permits above referred to.

As above noted, said sum of \$3,000.00, which you received as royalties on permits issued by you, has been placed to your account in a depository trust fund in the State Treasury. This deposit was made by you, I assume, under the authority of sections 24-3, et seq., General Code, providing for the deposit of moneys of the State in a depository trust fund in the State Treasury in the cases and under the conditions therein provided for. Inasmuch, however, as there was no question as to the right and title of the State to the moneys here in question and since it does not appear that any part of these moneys so received was subject to refund, it is not at all clear that you had any right or authority to deposit these moneys in the depository trust fund provided for by the sections of the General Code above referred to.

On the contrary, it would seem that these moneys should have been covered into the State Treasury as moneys of the State as required by section 24, General Code, which provides:

“On or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college, normal school or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed, verified statement of such receipts.”

And, in this view, it would further appear to be your duty under the provisions of this section and of section 24-5, General Code, to draw a requisition or voucher on this money standing to your account in the state depository trust fund and thereby pay this money into the State Treasury through the Auditor of State as provided for in sections 24-5 and 248, General Code.

It follows from this that the moneys here in question and any other moneys hereafter received by you as royalties or rentals upon permits issued by you for the taking of sand and gravel out of the

subaqueous lands of Lake Erie and which are required to be covered into the State Treasury as provided for in section 24, General Code, can be expended by your department for shore erosion and harbor improvement projects only pursuant to appropriations made by the General Assembly for this purpose. Section 22 of article II of the State Constitution provides:

“No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.”

In this connection, it is noted that Section 5 of Substitute Senate Bill No. 236, 116 O. L., 244, 245, provides that the Superintendent of Public Works may expend upon erosion and harbor projects along the shores of Lake Erie, and its connecting bays, such funds as may be appropriated by the General Assembly from time to time for such purposes, “and in addition, a sum of money equal to the funds derived from the granting of permits hereinafter authorized.” However, if it be considered that the provision of section 5 of said Act just quoted had the effect of appropriating moneys received by you for sand and gravel permits theretofore issued, which is extremely doubtful, such appropriation is no longer effective for the reason that more than two years has elapsed since the effective date of this Act.

Further, in this connection, it may be said that even if the provisions of Substitute Senate Bill No. 236 should be construed so as to require moneys paid into the State Treasury as the proceeds of sand and gravel permits issued by you to be allocated or accredited to your department for shore erosion and harbor improvement work, this would not obviate the requirement that such moneys be appropriated by the legislature before they can be used for such purposes. Thus, to illustrate the point here in mind, it is noted that Section 1316, General Code, provides that all moneys from fees received by the State Dental Board shall be paid into the State Treasury to the credit of a fund for the use of the State Dental Board. Construing this section of the General Code, this office held in an opinion found in the Opinions of the Attorney General for 1916, Vol. I, page 220, that:

“Section 1316, G. C., 106 O. L., 297, is not such an appropriation of the funds paid into the state treasury by the secretary of the state dental board as is contemplated by section 22 of Article II of the constitution, as (and) such funds cannot be used by such board until so appropriated.”

By Sections 1295-25 and 1295-26, General Code, like provision is made as to all moneys received by the State Board of Optometry. It was held, however, in an opinion of this office appearing in Opinions of the Attorney General for 1920, Vol. I, page 192, that:

“All moneys received by the Secretary of the State Board of Optometry under the act of March 20, 1919 (108 O. L., Part I, p. 73) must be paid monthly into the state treasury, and no part thereof can be drawn therefrom except in pursuance of a specific appropriation made by law. See section 22 of Article II of the state constitution.”

By way of specific answer to the question presented in your communication, I am of the opinion, therefore, that moneys received by you as royalties or rentals on sand and gravel permits issued by your department under the provisions of Substitute Senate Bill No. 236, above referred to, should be paid into the State Treasury in the manner provided by section 24, General Code, and that such moneys cannot be expended for shore erosion prevention projects or for the other purposes mentioned in said Act until these moneys have been appropriated by the General Assembly for the purposes stated.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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NO AUTHORITY FOR AUDITOR OF STATE TO CHARGE
DEPARTMENT OF COMMERCE FOR EXAMINATION
BY STATE EXAMINERS.

SYLLABUS:

There is now no authority whereby the cost of examinations by state examiners of the office of the Auditor of State may be charged to the Department of Commerce or the various divisions therein.

COLUMBUS, OHIO, October 13, 1937.

HON. ALFRED A. BENESCH, *Director of Commerce, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows: