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DEEDS, DIRECTOR OF HIGHWAYS, §§5501.11, 5501.111, R.C.—
PROVISIONS OF §155.01 R.C. NOT APPLICABLE—RESERVA-
TION OF GAS, OIL, COAL, MINERAL RIGHTS.

SYLLABUS:

The provision of Section 155.01, Revised Code, requiring that all deeds for public or other state lands expressly reserve to the state all gas, oil, coal, or other minerals, on or under such property does not apply to a deed for conveyance of property by the Director of Highways under the provisions of Section 5501.11, or Section 5501.111, Revised Code.

Columbus, Ohio, December 11, 1958

Hon. Charles M. Noble, Director of Highways
Department of Highways, Columbus, Ohio

Dear Sir:

Your request for my opinion has presented the following question:

“Must a deed for conveyance of property under the provisions of Section 5501.11 or Section 5501.111, Revised Code, contain a reservation to the State of all gas, oil, coal or other minerals on or under such property as set forth in Section 155.01, Revised Code?”

Section 5501.11, Revised Code, was amended in 1955, by the 101st General Assembly by inserting the following language in the statute:

“Provided that when property, other than property used by a railroad for operating purposes, is acquired in connection with improvements involving projects affecting railroads wherein the department of highways is obligated to acquire property under grade separation statutes, or on other improvements wherein the department is obligated to acquire lands under agreement with railroads for the readjustment of railroad facilities, a fee simple title may be acquired in the discretion of the director. When the title to lands which are required to adjust railroad facilities pursuant to agreements with the director of highways, is taken in the name of the state, said lands may in the discretion of the director be conveyed in fee simple to the railroads for which it was acquired. Said conveyance shall be prepared by the auditor of state and executed by the governor and bear the great seal of the State of Ohio.”

The same session of the General Assembly also enacted a new statute, Section 5501.111, which reads as follows:

“The director of highways may purchase property in fee simple in the name of the state by warranty deed, all or any part of a tract of land when the acquisition of a part of said land needed for highway purposes shall result in substantial damages to the residue by severance, controlled access or isolation.

“The warranty deed shall contain a description of the property suitable for platting on tax maps. The director is authorized and empowered in the name of the State of Ohio to sell to the highest bidder at public auction all the right, title, and interest of the State of Ohio in any part of the land not required for high-

way purposes, provided the director shall have said parcel of land appraised by three disinterested persons and advertise such sale in a newspaper of general circulation in the county in which the land is situated for at least three consecutive weeks prior to the date set for such sale.

“In no case shall such land be sold for less than two-thirds of the appraised value.

“All expenses incurred in the sale of each parcel of land shall be paid out of the proceeds of the sale and the balance shall be deposited in the highway fund from which the purchase was made.

“The deed to such purchaser shall be prepared by the auditor of state, executed by the governor and countersigned by the secretary of state and bear the great seal of the state.”

Both amended Section 5501.11, Revised Code, and new Section 5501.111, Revised Code, became effective on October 10, 1955.

The two above quoted sections have the following similar characteristics; namely, each section authorizes the Director of Highways to acquire property in fee simple only in connection with a highway improvement; and when the property so acquired is sold by the Director of Highways, the conveyance or deed must be prepared by the auditor of state, executed by the governor and bear the great seal of the state. Section 5501.111, Revised Code, also requires the secretary of state to countersign the deed.

As to the authority granted the Director of Highways by each section to convey the property so acquired in fee simple; Section 5501.11, Revised Code, permits the Director of Highways only to convey in fee simple the property to the railroads for which it was acquired. There is no authority in this section for the Director to convey the property to anyone except the railroad for which the property was acquired for the readjustment of railroad facilities effected by a highway improvement. Section 5501.111, Revised Code, authorizes the Director of Highways to sell to the highest bidder at public auction *all* the right, title and interest of the State of Ohio in any part of the land not required for highway purposes. Said section further states, that the balance of the proceeds of the sale after expenses have been paid shall be deposited in the highway fund from which the purchase was made.

The provisions of each section in regard to the preparation and execution of the instrument of conveyance are in conformity with both Section 115.20 and Section 5301.13, Revised Code.

Section 115.20, Revised Code, is as follows:

“The auditor of state shall prepare all deeds to be executed by the governor and countersigned by the secretary of state and, before their delivery, record them in his office.”

The provisions of Section 5301.13, Revised Code, read as follows:

“All conveyances of real estate, or any interest therein, sold on behalf of the state, shall be drafted by the auditor of state, executed in the name of the state, signed by the governor, countersigned by the secretary of state, and sealed with the great seal of the state. The auditor of state thereupon must record such conveyances in books to be kept by him for that purpose, deliver them to the persons entitled thereto, and keep a record of such delivery, showing to whom delivered and the date thereof.”

As stated before both Section 5501.11 and Section 5501.111, Revised Code, authorize the Director of Highways to purchase the property for the purpose stated in fee simple and further empowers said Director to convey the property in fee simple to the railroad if Section 5501.11, *supra*, is used, or to the highest bidder if Section 5501.111, *supra*, is used. Does the instrument of conveyance in either section require the reservation as stated in Section 155.01, Revised Code?

Said section is as follows:

“All sales or leases of public or other state lands, except canal lands other than reservoirs and lands appurtenant and adjacent to reservoirs, shall exclude all oil, gas, coal or other minerals on or under such lands, except lands specifically leased for such purposes, separate and apart from surface leases, and all deeds for such lands executed and delivered by the state shall expressly reserve to the state all gas, oil, coal or other minerals on or under such lands with the right of entry in and upon said premises for the purpose of selling or leasing the same, or prosecuting, developing, or operating the same.”

This statute was enacted by the 81st General Assembly in the year 1915. It requires that all sales and leases of public or other state lands, except canal lands other than reservoirs and lands appurtenant and adjacent to reservoirs shall exclude all mineral rights on or under such lands. It further requires the deed for such lands to expressly reserve to the state these mineral rights. The question then arises as to whether the property acquired and subsequently conveyed by the Director of Highways and authorized by either Section 5501.11 or Section 5501.111, Revised Code, is

in the nature of "public or other state lands" as stated in Section 155.01, Revised Code.

As stated before in this opinion, the property acquired and sold by the Director under the provisions of Section 5501.11, Revised Code, is for the readjustment of railroad facilities effected by highway improvement. The Director can only convey this property in fee simple to the railroads. The property involved in this section is not held by the Director for the use of the general public or held for the benefit of the State. Therefore property acquired by the Director in fee simple to adjust railroad facilities and conveyed in fee simple to the railroads for which it was acquired is not in the nature of "public or other state lands", and the reservation of mineral rights required by Section 155.01, Revised Code, does not apply to conveyances as authorized by Section 5501.11, Revised Code.

Section 5501.111, Revised Code, empowers the Director to purchase private property in fee simple when the acquisition of a part of said land needed for highway purposes will result in substantial damages to the residue by severance, controlled access or isolation. This section provides a very practical means whereby the Director of Highways can conserve the taxpayers' money appropriated for highway purposes, by recouping the purchase price or a substantial portion thereof, by selling the property to the highest bidder. The Director acquires all the rights in the property and the statute specifically authorizes and empowers the Director to sell *all* the right, title and interest of the State of Ohio in any part of the land not required for highway purposes. The General Assembly granted authority in this section to the Director to sell all the right, title and interest, and there is no express reservation of mineral rights or no reference to Section 155.01, Revised Code. The fact that the 101st General Assembly in passing this act did not require a reservation of mineral rights or make reference to Section 155.01, Revised Code, was no oversight on its part. This same session of the legislature that passed the act, Section 5501.111, Revised Code, on June 21, 1955, two days later, on June 23, 1955, passed a new act entitled "Leasing of lakefront land for private improvement." This act is now Section 123.031, Revised Code.

Said section provides in part as follows :

"All leases made hereunder shall be executed in the manner provided by Section 5301.13 of the Revised Code, and shall contain, in addition to the provisions required herein, a reservation to the state of all mineral rights as required by Section 155.01 of the Revised Code. * * *"

There can be no doubt that the legislature intended to authorize the Director of Highways to convey all the property rights to the highest bidder with no reservation to the State of mineral rights.

Furthermore, it is a well settled principle of law in Ohio that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision. See *Acme Engr. Co. v. Jones*, 150 Ohio St., 423; *State ex rel. Steller, et al, Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414; *State, ex rel. Elliott Co., v. Conner, Supt.*, 123 Ohio St., 310.

Both amended Section 5501.11 and Section 5501.111, Revised Code, are special statutes applying to a specific subject matter, while Section 155.01, Revised Code, is a general statute.

Also it should be noted that amended Section 5501.11 and Section 5501.111, Revised Code, are later expressions of the legislative will than Section 155.01, Revised Code, and the later enactments must be controlling.

Therefore, it is my opinion, and you are so advised that the provision of Section 155.01, Revised Code, requiring all deeds for public or other state lands expressly reserve to the state all gas, oil, coal, or other minerals, on or under such property does not apply to a deed for conveyance of property by the Director of Highways under the provisions of Section 5501.11 or Section 5501.111, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General