

1066.

GEORGE ROGERS CLARK MEMORIAL COMMISSION—MAY PREPARE
AND SELL MAP OF OLD NORTHWEST.

SYLLABUS:

The George Rogers Clark Memorial Commission, appointed by the Governor in 1928 and reappointed by the Governor in 1929, is not created in pursuance to any act of the Legislature and therefore has no legal status to perform the sovereign functions of the state. It follows that there is nothing to prevent such commission from preparing and selling such maps and other matters as it desires.

COLUMBUS, OHIO, October 18, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—Acknowledgment is made of your communication enclosing a letter addressed to you from Emma S. Backus, President of The George Rogers Clark Memorial Commission, and requesting my opinion upon the state of facts set forth in said letter, together with the exhibits attached thereto.

Said letter in part reads:

“In our conversation on Tuesday regarding the plan of issuing an educational map of the Old Northwest, as a part of our campaign for wider knowledge of the Revolutionary history of this section of our country, I omitted one point which I had been requested to discuss with you.

After heartily approving the plan, Gen. Orton recommended that we investigate through the Governor and the Attorney General, our right as a Commission to print and sell such a map, with a view to using the proceeds for the work of the Commission. I enclose copy of minutes in explanation.”

The resolution enclosed in Mrs. Backus' letter to you reads:

“Resolutions passed Monday, September 23rd, at the home of Gen. Edward Orton, Jr., Columbus, at a meeting of the George Rogers Clark Memorial Commission of Ohio, viz:

Mrs. Backus having prepared sketches which were to provide a basis of discussion for the proposal made at the June meeting and tentatively approved, that the Commission issue a pictorial map of the Old Northwest for educational purposes, the evening was spent in discussing the model submitted, from which the artist and cartographer might make a map which we plan to print, if the project can be financed.

The following points were agreed upon:

That the Northwest Territory should be stressed prominently in the coloring of the map to make it the most conspicuous unit. That the Virginia-Kentucky area, the Canadian area, and the Trans-Mississippi area should be in lighter, less conspicuous tints.

That the border of the chart should contain the seals of the six Northwest Territory States, with those of Virginia and Kentucky, and that the intervening spaces, between the seals, should be divided approximately 24 spaces, to contain pictures of prominent personages and historical scenes, as may be found most expedient, and that the Northwest area should show the sites of towns, battles and marches, fortifications and military posts, incidental to the

campaigns of Clark and those immediately succeeding him, with approved scrolls and texts describing events.

Mrs. Backus was requested to continue the work that she has already done on the map, and to seek the advice of historians, map-makers, artists and printers who might assist her in the task, and to report at the next meeting such progress as she may be able to make, and some sort of financial estimate of the probable cost of going through with the enterprise.

The authority of the Commission to print and sell such a map and use the proceeds for the work of the Commission should be investigated through the Governor and the Attorney General. The secretary was entrusted with this duty."

I am also in receipt of a letter from Hon. Edward Orton, Jr., in which he makes inquiry relative to the same matter to which you refer, and in his communication gives same facts relative to the status of The George Rodgers Clark Memorial Commission.

Upon careful investigation, I have reached the conclusion that nowhere has the Legislature authorized the creation of such a board as the one under consideration. From a conference with General Orton and Mr. Marvin, members of the board, it has been learned that by some action of the Governor this board was established in 1928, and has been functioning in some respects. It appears that the Governor was not acting pursuant to any statutory authority, but rather lent his approval to such procedure in the interests of what was regarded as a worthy enterprise.

It has been noted that the 88th General Assembly in House Bill No. 513, passed April 6, 1929, made an appropriation for such commission in the following language:

"GEORGE ROGERS CLARK MEMORIAL COMMISSION

Personal Service	\$2,400.00
Maintenance	386.00
Total Operation and Maintenance.....	\$2,786.00"

From the Senate Journal under date of February 18, 1929, it appears that Senate Joint Resolution No. 19, which sought to create The George Rogers Clark Memorial Commission, was introduced. The purpose of this resolution was to have such commission represent the State of Ohio in its participation in the construction of a national memorial to George Rogers Clark at Vincennes, Indiana, and in the sesquicentennial celebration of the conquest of the northwest territory. Section 2 of that resolution undertook to appropriate \$200,000.00 for the purpose of designing and constructing near the site of Fort Sackville a permanent memorial commemorating the winning of the northwest and the achievements of Clark. Section 3 appropriated \$2,700.00 to the use of such commission in paying its necessary clerical, office and incidental expenses, including necessary traveling expenses.

According to the Senate Journal above referred to, this joint resolution was "laid over under the rule," and it seems that no further action was ever taken thereon.

After extended search, I am convinced that no legislation has ever been passed creating this commission or giving it official status as a state body.

It has been noted, however, that the 88th General Assembly in Amended Senate Bill No. 91 (113 O. L. 547) passed an act providing for the creation of the Ohio Revolutionary Memorial Commission to consist of nine members to be appointed by the Governor. In certain places in the act it refers to George Rogers Clark and authorizes the commission to arrange for and conduct a celebration in dedication of

the memorial trail on or about the 150th anniversary of the battle of Piqua. This commission, of course, will have a legal status, but apparently has no connection with The George Rogers Clark Memorial Commission to which you refer, although the powers granted to the one may in some respects relate to some of the purposes in which the other is interested.

From the foregoing it will appear that the only action of the Legislature which was actually taken relating to such commission was the item in the appropriation bill hereinbefore set forth.

Of course, the Legislature speaks in appropriation bills as well as in any other legislation that is passed, and if the language used were such as to create a commission, undoubtedly it could be done in the appropriation bill as well as in any other measure. From the language used, however, there is no indication that the Legislature intended to give such commission any official status by making the appropriation. It has been the custom of the Legislature to appropriate money for the use and benefit of various enterprises the officials of which do not have the status of state officers. The Ohio Archaeological and Historical Society is an example.

It must be concluded that the commission to which you refer has no legal status and, in its operations, would not be limited as commissions properly created by statute would be limited. In other words, it is a general rule of law that a public official has only such powers as are expressly granted to him by statute, and such other powers as are necessary and essential to carry into effect the express powers granted.

If the commission to which you refer were a state commission in the technical sense any moneys which it receives from any source must be turned into the State treasury as provided in Section 24, General Code, unless it is expressly authorized to make a different use of such funds, and the only moneys which such commission could expend from the public treasury would be those specifically appropriated by the Legislature.

As hereinbefore indicated, the commission to which you refer, not being created by the Legislature, would not be bound by such limitation and could, therefore, do practically anything with respect to carrying out its activities that a private person could do. However, in such undertaking it would in no wise represent the State and could incur no obligations against the State. It may be, however, that as a matter of law, the members of such commission would be an entity somewhat like a partnership and the individual members might be liable for any debts and obligations incurred on behalf of the commission.

In view of the foregoing, and in specific answer to your inquiry, I see nothing in the laws of Ohio to prevent The George Rogers Clark Memorial Commission from printing and selling a map, if it chooses to do so.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1067.

APPROVAL, AGREEMENT FOR SWITCH TRACK AT WILBERFORCE
UNIVERSITY, WILBERFORCE, OHIO.

COLUMBUS, OHIO, October 18, 1929.

HON. ROBERT B. BARCUS, *President, Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University, Wilberforce, Ohio.*

DEAR SIR:—This is to advise you of the receipt from the State Architect and Engineer of a switch track agreement, in duplicate, prepared and presented by the