

**OPINION NO. 84-021****Syllabus:**

In order to enter private lands to construct an improvement in accordance with R.C. Chapter 1515, a board of county commissioners must acquire the property, or obtain a right-of-way or easement, by gift, purchase, or appropriation pursuant to R.C. Chapter 163.

**To: Peter R. Seibel, Defiance County Prosecuting Attorney, Defiance, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, April 30, 1984**

I have before me your request for my opinion in which you ask whether a board of county commissioners that is making an improvement pursuant to R.C. Chapter 1515 may enter property without first obtaining a right-of-way or easement.

A soil and water conservation district is created in each county pursuant to R.C. 1515.03. Supervisors are to be elected for each district in accordance with

R.C. 1515.05. The powers of these supervisors are set forth under R.C. 1515.08 which provides, in pertinent part:

The supervisors of a soil and water conservation district have the following powers in addition to their other powers:

(A) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and the preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water needed within the district, and to publish the results of such surveys, investigations, or research, provided that no district shall initiate any research program except in cooperation or after consultation with the Ohio agricultural research and development center;

(B) To develop plans for the conservation of soil resources and for the control and prevention of soil erosion and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, and to publish such plans and information;

(C) To implement, construct, repair, maintain, and operate preventive and control measures and other works of improvement for natural resource conservation and development and flood prevention, and the conservation, development, utilization, and disposal of water within the district on lands owned or controlled by this state or any of its agencies and on any other lands within the district, which works may include any facilities authorized under state or federal programs, and to acquire, by purchase or gift, and to hold, encumber, or dispose of real and personal property or interests therein for such purposes;

(D) To cooperate or enter into agreements with any occupier of lands within the district in the carrying on of natural resource conservation operations and works of improvement for flood prevention and the conservation, development, utilization and management of natural resources within the district, subject to such conditions as the supervisors consider necessary;

. . . .

(H) To make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 1515.

. . . .

(K) To enter, either in person or by designated representatives, upon lands, private or public, in the necessary discharge of their duties. . . . (Emphasis added.)

When the supervisors of a conservation district determine, pursuant to R.C. 1515.08, that a water development and management improvement should be constructed, they must certify that determination to the board of county commissioners of the county containing the territory which is to benefit by the improvement. R.C. 1515.20. If the board of county commissioners approves construction of the improvement, those powers granted to conservation district supervisors under R.C. 1515.08(C) are conferred upon the board. R.C. 1515.21. Therefore, the board of county commissioners is authorized, *inter alia*, to implement, construct, repair, maintain and operate works of improvement for natural resource conservation on lands within the district, and to acquire, hold, encumber or dispose of real and personal property or interests therein for these purposes. R.C. 1515.08(C), R.C. 1515.21.

The powers conferred upon a board of county commissioners under R.C. Chapter 1515, to enter and construct improvements upon private lands, must be interpreted in light of Ohio Const. art. I, §19 which provides, in pertinent part:

Private property shall ever be held inviolate, but subservient to the public welfare. . . . [W] here private property shall be taken for

public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Consequently, as stated by the court in Smith v. Erie R.R. Co., 134 Ohio St. 135, 16 N.E.2d 310 (1938) (syllabus, paragraph 1), any taking of private property for a public use entitles the owner to compensation.

In recognition of this constitutional requirement, the legislature has expressly empowered boards of county commissioners to acquire real property for soil and water conservation improvements by providing as follows:

When, in the opinion of the board of county commissioners, it is necessary for the board to acquire real property or a right-of-way or other easement for a conservation works of improvement under Chapter 1515. of the Revised Code, the board may appropriate such real property or right-of-way or other easement in accordance with sections 163.01 to 163.62 of the Revised Code.

R.C. 1515.21. While this provision may appear to confer the discretion to elect to proceed without appropriation, or otherwise acquiring an easement or right-of-way, the provision must be read in conjunction with other statutory powers granted under R.C. Chapter 1515. Pursuant to R.C. 1515.08(C), (D) and (H) the supervisors of a conservation district may cooperate with occupiers of lands, may purchase, acquire, hold, or encumber lands, and may execute agreements or instruments necessary to carrying on conservation operations and improvements.<sup>1</sup> Accordingly, while R.C. 1515.21 permits a board of county commissioners to determine whether an improvement should be constructed, if construction of an improvement involves the use of private lands within the district and the owner does not consent to such use, then Ohio Const. art. I, §19 entitles the landowner to be compensated. See Board of County Commissioners v. Gates, 83 Ohio St. 19, 24, 93 N.E. 255, 257 (1910) ("[A]ny actual and material interference with private property rights is a taking of property within the meaning of the constitution."). R.C. 1515.21, in conjunction with R.C. 1515.08, authorizes a board to acquire property or interests therein for these purposes by purchase, or by appropriation.

It is, therefore, my opinion, and you are advised, that in order to enter private lands to construct an improvement in accordance with R.C. Chapter 1515, a board of county commissioners must acquire the property, or obtain a right-of-way or easement, by gift, purchase, or appropriation pursuant to R.C. Chapter 163.

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<sup>1</sup> The authorization to purchase property, pursuant to R.C. 1515.08(C), does not permit the supervisors of a soil and water conservation district to exercise powers of eminent domain. 1979 Op. Att'y Gen. No. 79-053.