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1. DROWNED PERSON—RESERVOIR—PART OF CONSERVANCY DISTRICT ORGANIZED UNDER LAWS OF OHIO — WITHIN POWER OF BOARD OF DIRECTORS TO TAKE NECESSARY STEPS TO RECOVER BODY — SECTIONS 6828-1 TO 6828-79 G. C.
2. COUNTY COMMISSIONERS MAY EMPLOY DIVERS OR OTHER PERSONS TO RECOVER BODY OF PERSON DROWNED IN SUCH RESERVOIR, LOCATED IN SUCH COUNTY.

SYLLABUS:

1. In the event a person is drowned in a reservoir which forms part of a conservancy district organized under the provisions of Sections 6828-1 to 6828-79 it is within the powers of the board of directors of such conservancy district to take such steps as are necessary to recover the body.

2. When the county commissioners in the use of their discretion have determined that public welfare requires the removal of such body they may expend public funds for the purpose of employing divers or other persons in recovering the body of a person who has been drowned in a reservoir forming a part of a conservancy district organized under the laws of Ohio and located in such county.

Columbus, Ohio, June 21, 1943.

Hon. Glenn L. Fortune, Prosecuting Attorney,  
Carrollton, Ohio.

Dear Sir:

I acknowledge receipt of your communication requesting my opinion reading as follows:

"We respectfully request your opinion regarding the following questions pertaining to Conservancy Reservoirs established by the Muskingum Watershed Conservancy District of Ohio.

#### STATEMENT OF FACTS

The Leesville Reservoir is located entirely within the limits of Carroll County, Ohio. It was built by the Muskingum Watershed Conservancy District under the laws of Ohio pertaining to such district, and is at the present time under the supervision and control of said district, the title to the land, however, being transferred to the War Department. The concession of the boating rights have been granted to a private individual, who in turn rents boats for boating on said reservoir and issues permits for motors and private boats to be used on said lake. At the present time there is a great deal of out-door activity in connection with said lake, both in boating for pleasure only and in fishing on said lake. Carroll County, as such, receives no revenue whatsoever from said reservoir and has no authority or control over said Leesville Reservoir. Recently, a young man, while engaged in boating only, was drowned and his body not recovered.

#### QUESTION

1. Upon whom does the obligation fall of bearing the expense of recovering the body of the young man who drowned from the lake?

2. Are the officials of Carroll County, Ohio, justified, or within their legal right, to expend any public funds for the purpose of employing divers or other persons for the purpose of recovering said body?

3. In the event the person who drowned would have been engaged in fishing on said lake instead of boating, would that fact alter the obligation for the recovery of the body, and if so, upon whom would the obligation fall?"

The Muskingum Watershed Conservancy District was organized

pursuant to the provisions of the General Code contained in Sections 6828-1 to 6828-79 inclusive, and known as the Conservancy Act of Ohio. Under the provisions of Section 6828-8 it is made the duty of the Court of Common Pleas, which under previous sections of the Act has found it necessary to establish a district, to appoint a board consisting of three persons, two of whom must be resident freeholders within the district. This board, in addition to the general power to execute and carry out the plans for the work necessary to accomplish the general purposes, is given certain special powers, to which I will direct particular attention.

Section 6828-24a provides in part as follows:

“The board of directors may construct, improve, operate, maintain, and protect parks, parkways, forest preserves, bathing beaches, playgrounds, and other recreational facilities upon the lands owned or controlled by the district, and may acquire by purchase or appropriation property, additional to that required for the purposes for which the district was incorporated, in order to provide for the protection, more adequate development, and fuller public use and enjoyment of such improvements and facilities. The board shall have authority to impose and collect charges for the use of the properties, improvements, and facilities of the district for recreational purposes. \* \* \* ”

It will be noted that among the powers above enumerated is the power to *protect* the parks, parkways, forest preserves, bathing beaches, playgrounds and other recreational facilities which the board is authorized to provide.

The board is also given power in Section 6828-24 to establish rates and make contracts for the use or sale of water made available by the works and improvements built or acquired by it.

It seems to me to follow, from the above powers and authority given to the board of directors of such a conservancy district, that there is coupled with these powers the duty to protect the works, including the recreational facilities provided, from contamination or from any pollution that would render them unfit or unsuitable for the intended uses. There can be no doubt but that they would have the power to spend from the revenues of the district amounts necessary to accomplish such purpose to the extent, if necessary, of employing divers and other persons or means for the purpose of recovering a body contained in the reservoir. However, I am unable to find any provision of statute placing a duty upon the conservancy district unless and until the presence of the body constitutes a nuisance.

As pointed out by West, J. in *Shanklin v. Commissioners of Madison County*, 21 O. S. 575, 579, the county commissioners are the managing board of the county and perform for it all the functions possessed by it other than those which have been specifically granted to some other officers. I find no provision of statute granting to any other officer the authority to employ on behalf of the county the facilities suggested in your request. It would therefore seem that if the county commissioners were of the opinion that public welfare required the employment of such divers and other persons they would make such employment at the expense of the county. However, I find no statute requiring such conduct on the part of the county, and it is only when public welfare, as distinguished from private welfare or satisfaction, demands such conduct that county funds may be expended for such purpose.

In view of the foregoing, and in specific answer to your questions, I am of the opinion that :

1. In the event a person is drowned in a reservoir which forms part of a conservancy district organized under the provisions of Sections 6828-1 to 6828-79, it is within the powers of the board of directors of such conservancy district to take such steps as are necessary to recover the body.

2. When the county commissioners in the use of their discretion have determined that public welfare requires the removal of such body they may expend public funds for the purpose of employing divers or other persons in recovering the body of a person who has been drowned in a reservoir forming a part of a conservancy district organized under the laws of Ohio and located in such county.

Your letter states that the man in question was drowned while boating, and you raise the further question as to whether it would alter the situation in the event he was drowned while fishing. The fact that he might have drowned while fishing instead of boating, would in my opinion have no bearing on the conclusion to be reached.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.