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CANAL COMMISSION—SUPERINTENDENT OF PUBLIC WORKS—HAS AUTHORITY TO EXERCISE ALL THE POWERS OF THE OLD CANAL COMMISSION—SECTION 464 G. C.—SECTION 13964 G. C. IS STILL IN FULL FORCE AND EFFECT.

SYLLABUS:

The Superintendent of Public Works has the authority under Section 464 of the General Code to exercise all the powers of the old Canal Commission under Section 13964 of the General Code and that the latter section is still in full force and effect.

Columbus, Ohio, October 31, 1949

Hon. S. O. Linzell, Director, Department of Public Works
Columbus, Ohio

Dear Sir:

A request of your predecessor for my opinion reads as follows:

"The Bureau of Code Revision has recommended the repeal of General Code Section No. 13964 on the theory that the prior repeal of Section 13961 made Section 13964 inoperative.

"This Department, each year, has established and fixed boundary lines of the State canal property pursuant to Section 13964 with the approval of the Attorney General.. The men in the Code Revision office interpret the 'commission' in Section 13964 as being a special commission created by Section 13961, which commission has no successor.

"It has been the interpretation relied upon by this department and I believe approved by the Attorney General's office that the Commission referred to is the old Canal Commission which has been succeeded in authority by the Superintendent of Public Works.

"If the commission and its successor referred to in Section 13964 went out of existence with the repeal of Section 13961 then all boundary lines which have been fixed pursuant to Section 13964 may be in jeopardy.

"If it is your opinion that Section 13964 has no application because of the repeal of Section 13961, then a new statute should be drafted providing for the determination of boundary lines as provided in Section 13964 granting the authority to the Director of Public Works, which statute should, if possible, validate those boundaries which have been fixed since Section 13961 was repealed.

"If it is your opinion that Section 13964 gives the Superintendent of Public Works authority to fix boundaries, will you render an opinion to that effect for the guidance of the Bureau of Code Revision and to be cited as my authority for the fixing of boundary lines between canal property and private property."

In order to properly render an opinion in this matter, it is necessary that we quote in full the following sections of the General Code which are involved:

Section 13961, General Code: (Repealed—122 O. L. 25)

"The governor, by and with the advice and consent of the senate, shall appoint a commission consisting of three persons, not more than two of whom shall belong to the same political party, who shall, within thirty days after their appointment proceed to survey and determine the boundaries of all lands heretofore appropriated for canal purposes, and owned by the state, the boundaries of which are not now accurately known and of record, as already surveyed, and to mark the same by proper monuments, and to make maps and plats of all said

canal lands not already platted, together with the necessary description and location of all bridges, culverts and aqueducts, and shall clearly indicate and describe in their report any part of said property that in their judgment is not necessary for canal purposes, all of which is to be preserved as hereinafter provided; and on that part used for channel purposes, the boundaries of which are not in dispute, the courses and distances shall only be obtained for the purpose of ascertaining the lengths thereof. The members of said commission, after their appointment as above provided for, shall take an oath of office, and give bond in the sum of one thousand dollars, conditioned for the faithful discharge of their duties; and said commissioners shall each receive the sum of twelve hundred dollars per annum, and their necessary expenses while in the prosecution of their duties, to be paid out of the canal fund, said salary to be paid in quarterly installments; and all accounts for expenses shall be evidenced by detailed statement duly verified by oath, and approved by the auditor of state; and the necessary amount to meet such salary and all other expense of the commission is hereby appropriated out of said canal fund of the state, which shall be paid out on the warrant of the state auditor; that the term of office of said persons so appointed shall be for the period of two years, unless sooner removed by the governor, and the governor is hereby authorized to fill any vacancy, that may occur, from the political parties as named in the preceding part of this section."

Section 13964, General Code:

"That in all cases where any land claimed by the state is in the possession and occupancy of any person, persons, or corporation claiming the ownership thereof, and such person, persons, or corporation shall appear before said commission and submit such claim or claims to the award and decision of said commission for the purpose of determining the boundary line of said land or the ownership thereof, said commission may make an award and decision thereon, which shall be final and conclusive as to all the parties thereto having notice and not under legal disability."

Section 464, General Code:

"In addition to the powers and duties herein conferred upon the superintendent of public works, said superintendent shall exercise all of the powers and duties heretofore conferred by law upon the Ohio canal commission and the board of public works with respect to the lease and sale of canal lands, other than state reservoir lands dedicated as public parks and pleasure resorts and all other powers and duties now conferred by law upon said canal commission or board of public works, but no land lease, or sale of

canal lands or other state lands, shall be made except upon the written approval of the governor and the attorney general."

The creation of a canal commission occurred on March 28, 1888 when the Legislature passed Senate Bill No. 21 (85 O. L. 127.) The title of this act was as follows:

"An Act to provide for a commission to establish the boundaries and lines of the canals, canal basins, reservoirs, etc., of the state, by an accurate survey by metes and bounds, together with maps and plats of the same, and to define and protect the ownership and titles of the state in and to all lands belonging to and connected with said canals."

The original Senate Bill No. 21 was later amended and subsequently broken down in part into Sections 13961 to 13964 of the General Code. It is, therefore, obvious that the Commission referred to in Section 13964 of the General Code is the Canal Commission originally created by Senate Bill No. 21 and later amended and designated as Section 13961, General Code.

In 1929 the Legislature specifically conferred upon the Superintendent of Public Works all the powers and duties previously conferred by law upon the Ohio Canal Commission and the powers and duties which at that time were conferred upon the Ohio Canal Commission.

At the time Section 464 of the General Code was passed by the Legislature, Sections 13961 to 13964, inclusive, General Code, were in existence. On July 14, 1947, the Legislature repealed Sections 13961 to 13963, inclusive, of the General Code, but took no action in so far as Section 13964, General Code, was concerned. Since these statutes had a common relation since 1888, it is apparent that the Legislature specifically desired to keep the procedure set up in Section 13964 for arbitration and award as to rights of occupants of land claimed by the state; otherwise the section would have been repealed with the related sections. In other words, the provisions for personal appearance of a claimant before the state to submit claims for award and decision involving boundary lines remained intact but the authority to make the final determination had been shifted by Section 464 of the General Code to the Superintendent of Public Works.

Section 464, General Code, is a reference statute. It incorporates by reference Section 13961 to Section 13963 of the General Code relating

to the canal commissioner. The effect of a reference statute is discussed in 37 O. Jur. 339, Section 46, which reads in part as follows:

“* * * When in one statute a reference is made to an existing law in prescribing the rule or manner in which a particular thing shall be done or for the purpose of ascertaining powers with which persons named in the referring statute shall be clothed, the effect generally is to revive or continue in force the statute referred to not for the purposes for which it was originally enacted, but merely for the purpose of carrying into execution the statute in which the reference is made. The law referred to is, in effect, incorporated with, and becomes a part of, the one in which the reference is made as fully as if the former had been repeated verbatim in the latter and, so long as that statute continues, will remain a part of it. The power conferred by the reference statute is the same power conferred by the statute referred to and is subject to the same limitations stated in the proviso of the latter section.

It is, therefore, my opinion that the Superintendent of Public Works has the authority under Section 464 of the General Code to exercise all the powers of the old Canal Commission under Section 13964 of the General Code and that the latter section is still in full force and effect.

Respectfully,

HERBERT S. DUFFY,
Attorney General.