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EMINENT DOMAIN, POWER OF—DEPARTMENT OF PUBLIC WORKS AUTHORIZED TO EXERCISE POWER—TO ACQUIRE LAND—RECREATIONAL PARKS—HOUSE BILL 477, 96 GENERAL ASSEMBLY.

SYLLABUS:

The Department of Public Works is authorized to exercise the power of eminent domain to acquire land to provide for the recreational parks for which an appropriation was made to the Department of Public Works in House Bill 477, enacted by the 96th General Assembly.

Columbus, Ohio, July 20, 1946

Hon. Frank L. Raschig, Director, Department of Public Works
Columbus, Ohio

Dear Sir:

I hereby acknowledge receipt of your request for my opinion, which reads:

“Under the terms of H. B. 477, enacted by the 96th General Assembly, the Legislature made the following appropriation to this department:

G-1 Lands—To provide for recreational parks to be located, one east and one west of the city of Cleveland, on the shore of Lake Erie.....\$400,000.00

We would like to know if in view of this appropriation and the power vested in the Department of Public Works by virtue of Sections 154-40, subdivision 5, 442 to 454, inclusive, of the General Code, this department has the power of eminent domain to acquire land to provide for the recreational parks as provided for in H. B. 477."

Section 154-40, General Code, in so far as is pertinent hereto, reads as follows:

"The department of public works shall have all the powers and perform all the duties vested by law in the superintendent of public works, the state building commission and the state geologist. Wherever powers are conferred or duties imposed upon such department, offices or officers, such powers and duties shall, except as herein provided, be construed as vested in the department of public works.

In addition to the powers so transferred to it, the department of public works shall have the following powers: * * *

(5) To purchase all real estate required by the state government, or any department, office or institution thereof; in the exercise of which power such department shall have authority to exercise the power of eminent domain, in the manner provided by law for the exercise of such power by the superintendent of public works in the appropriation of property for the public works of Ohio, as heretofore defined. * * *"

I am aware that in spite of this clear grant of authority for your department to exercise the sovereign power of eminent domain, you are hesitant to proceed under it because the power to acquire land for public parks and pleasure resorts by means of the exercise of the power of eminent domain has also been given to the Conservation and Natural Resources Commission of the State of Ohio.

Section 472, General Code, provides in part:

"All lands and waters now or hereafter dedicated and set apart for public park or pleasure resort purposes, or which may hereafter be acquired for such purposes, shall be under the control and management of the conservation council (now the conservation and natural resources commission), who shall protect, maintain and keep them in repair. * * * And said conservation council may, subject to the approval of the attorney general, acquire by gift, purchase or by appropriation proceedings, on behalf of the state, such real and personal property, rights and privileges

as may be necessary in its judgment for the use, extension, enlargement and maintenance of such public parks and resorts, and for new public parks, resorts, reservoirs, channels, drives, roadways, docks, dams, landings, wharves and other improvements. * * *” (Parenthetical matter added.)

In order for Section 472, General Code, to affect the clear grant of authority contained in Section 154-40, *supra*, it is necessary that it be enacted subsequent to Section 154-40, and also be so irreconcilable and repugnant to that grant that by implication it repeals the earlier grant. Neither of these conditions exists.

The 96th General Assembly, which enacted the bill appropriating \$400,000.00 to the Department of Public Works for the two parks referred to in your letter, also amended Section 154-40, General Code, the section as amended becoming effective October 5, 1945. The new matter added to Section 154-40 by this amendment has no bearing on your question. However, the General Assembly, in enacting the amended section, also reenacted that part of the section which grants to your department the authority to exercise the power of eminent domain to acquire the real estate required by any department, office or institution of state government, whereas Section 472 has been in effect in its present form since July 25, 1929 (see 113 O. L., 551).

It is a primary rule of statutory construction that all statutory provisions should be so construed if possible as to give full force and effect to each and all of them. See 37 O. Jur., p. 617, and cases cited therein. As I have hereinbefore indicated, Section 154-40 and Section 472, General Code, are not, in my opinion, inconsistent or repugnant to each other. There is no limitation on the number of governmental agencies which the General Assembly can authorize to exercise the power of eminent domain. In this regard the General Assembly has also granted the authority to exercise this power for the acquisition of real property needed by the state in building highways to the Director of Highways. See Section 1178-2 and related sections.

Since the same General Assembly has in the instant case expressly appropriated the sum of money in question to the Department of Public Works for two new state parks, and also reenacted Section 154-40, General Code, giving to the Department of Public Works the authority to exercise

the power of eminent domain to acquire the real estate required by the state government, it obviously was the intention of that body that the lands for which such appropriation was made were to be acquired for the state by your department.

In specific answer to your question, it is therefore my opinion that the Department of Public Works is authorized to exercise the power of eminent domain to acquire land to provide for the recreational parks for which an appropriation was made to the Department of Public Works in House Bill 477, enacted by the 96th General Assembly.

Respectfully,

HUGH S. JENKINS,
Attorney General