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STATE CONSERVANCY DISTRICT OR POLITICAL SUBDIVISION—AUTHORITY TO DESIGNATE—“DESIGNATED WATER SKI ZONE” OR “DESIGNATED BATHING AREA.”— §§1547.08, 1547.09, 1547.14, 1547.20, R.C.

SYLLABUS:

The authority to designate a “designated bathing area,” “an area in which watercraft are prohibited,” “a designated speed zone or water ski zone,” a “designated ski zone,” or a “marked racing car” as contained in Sections 1547.08, 1547.09, 1547.14, and 1547.20, Revised Code, respectively, is held by the state department, conservancy district, or political subdivision of the state having jurisdiction and control over the particular water involved.

Columbus, Ohio, January 20, 1960

Hon. Fred E. Jones, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have received inquiries as to the interpretation of certain Sections of Chapter 1547 dealing with watercraft, found in the 1959 Supplement to the Ohio Revised Code, and effective August 5, 1959.

“Section 1547.08 refers to a ‘designated bathing area’ and an ‘area in which watercraft are prohibited’. Section 1547.09 refers to a ‘designated speed zone or water ski zone’. Section 1547.14 refers to a ‘designated ski zone’. Section 1547.20 refers to a ‘marked racing course’.

“Your opinion is respectfully requested as to who has the right to designate and mark the areas referred to above, and what are the means and procedure to be followed for such designation and marking.”

All of the sections of law referred to in your letter were enacted by Amended Substitute House Bill No. 708 of the 103rd General Assembly, effective August 8, 1959, which bill enacted Sections 1547.01 to 1547.37, inclusive, Revised Code. Also pertinent in this question are Sections 1501.12 to 1501.27, inclusive, and 1501.99, Revised Code, which were

enacted by Amended Substitute House Bill No. 928 of the 103rd General Assembly, effective January 1, 1960.

Both Amended Substitute House Bill No. 798, *supra*, and Amended Substitute House Bill No. 928, *supra*, deal with the regulation of watercraft on the waters of this state. The first bill deals with the actual regulation of the use of watercraft; the second bill deals with the numbering and licensing of watercraft.

Section 1501.13, Revised Code, creates a division of watercraft within the department of natural resources. Section 1501.14, Revised Code, specifies that the division be administered by an administrator of watercraft and states that the administrator “* * * shall have the power to promulgate and adopt administrative rules and regulations deemed necessary by said administrator to supplement the operation and numbering of watercraft as provided for in sections 1547.01 to 1547.99, inclusive, of the Revised Code, and 1501.12 to 1501.99, inclusive, of the Revised Code.
* * *

Section 1501.23, Revised Code, also relating to the regulation of watercraft, reads as follows:

“The provisions of sections 1501.01 to 1547.99, inclusive, of the Revised Code, and of other applicable laws of this state shall govern the operation, equipment, numbering, and all other matters relating thereto whenever any watercraft shall be operated on the waters of this state, conservancy district, or political subdivision of this state, or when any activity regulated by sections 1501.01 to 1547.99, inclusive, of the Revised Code shall take place thereon; but nothing in sections 1501.01 to 1549.99, inclusive, of the Revised Code shall be construed to prevent the adoption of any rules, regulations, or ordinance relating to operation and equipment of vessels the provisions of which are identical to the provisions of sections 1501.01 to 1547.99, inclusive, of the Revised Code, amendments thereto, or regulations issued thereunder; provided, that such ordinances shall be operative only so long as and to the extent that they continue to be identical to the provisions of sections 1501.01 to 1547.99, inclusive, of the Revised Code. Conservancy districts and political subdivisions of this state may enact ordinances, rules or regulations limiting the horsepower of inboard, or outboard motors, maximum and minimum size and type of watercraft, inflatable watercraft, and the speed at which watercraft may be operated, except that upon impounded bodies of water covering three thousand five hundred acres of land or more, no conservancy district or political subdivision shall prohibit the use of motors of 65 horsepower or *less when used in conjunction*

with properly proportioned boats in a reasonable area to be designated for the use of said motors and boats and for water skiing.

“Any department, conservancy district, or political subdivision of this state may, at any time, but only after public notice published in a newspaper of local circulation make formal application to the administrator of the division of watercraft for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

“The division of watercraft is hereby authorized to make special rules and regulations with reference of the operation of watercraft on any waters within the territorial limits of any subdivision of this state.

“No political subdivision of this state or conservancy district shall charge any license fee or other charge against the owner of any watercraft for the right or privilege of operating said watercraft upon the waters of any such political subdivision or conservancy district and no license or number in addition to those provided for hereunder shall be required by any state department, conservancy district or political subdivision of this state.” (Emphasis added)

In view of the above provisions of law it appears that the administrator of the division of watercraft (as of January 1, 1960) will definitely have the power to make rules and regulations pertaining to the operation of watercraft in this state—such power having been granted several times. It also appears that conservancy districts and political subdivisions may make rules and regulations relating to operation and equipment of vessels, which are identical to those adopted by the administrator.

I have been unable to find any definition of “designated bathing area,” “area in which watercraft are prohibited,” “designated speed zone or water ski zone,” or “marked racing course.” Likewise, I have been unable to find any provision specifying how such designations are made.

It might be argued that the administrator of watercraft will have the power to make such designations under his rule-making authority. On reviewing such authority, however, it appears that it is mainly concerned with the horsepower, size and speed of watercraft; there being only the vague reference to “reasonable area to be designated for the use of said motors and boats and for water skiing” in Section 1501.23, *supra*. Further

it must be noted that Sections 1547.08, 1547.09, 1547.14 and 1547.20, Revised Code, all became effective on August 5, 1959, while the division of watercraft is not created, nor can the administrator be appointed, until January 1, 1960.

It undoubtedly was the intention of the Legislature that Sections 1547.01 et seq., Revised Code, go into immediate effect as of August 5, 1959. The emergency clause of Amended Substitute House Bill No. 708, *supra*, appears clear on this point, reading :

“SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the Public peace, health and safety. The reason for such necessity lies in the fact that its enactment into law at the earliest possible time will promote safety upon the waters of this state during the summer months of this year, the season of heaviest activity of watercraft. Therefore this act shall go into immediate effect.”

I am of the opinion, therefore, that the administrator is not given the power to make the designations here in question.

Since all of the waters of the state are under the control of either the state, a conservancy district or some other political subdivision of the state, there is ample authority for the making of the designations here in question. Pertinent in this regard are the words of Section 1547.20, Revised Code, reading :

“Except on the waters of Lake Erie, the Ohio River and the immediately connected harbors and anchorage facilities, no person or organization shall conduct any race, powercraft regatta, or other special event upon the waters of the state *without first requesting and obtaining written permission of the state department, conservancy district, or political subdivision of the state having jurisdiction and control over such waters.* Any state department, conservancy district, or political subdivision of the state may suspend its respective rules and regulations during a race, regatta, or special event. Nothing in this section shall be construed to mean that the operator of a watercraft competing in a specially authorized race, regatta or special event shall not attempt to attain high speeds *on a marked racing course.* (Emphasis added)

These words definitely imply that the agency having jurisdiction and control of the waters shall have the authority to designate a “marked racing course.” Also, Sections 1547.16, 1547.17, 1547.18 and 1547.19,

Revised Code, refer to a “special permit issued by the state department, conservancy district, or political subdivision of the state having jurisdiction and control over such water.”

While Sections 1547.08, 1547.09, and 1547.14, Revised Code, to which you refer, do not contain references such as noted above, I am of the opinion that such is implied and that it is within the police power of the state, a conservancy district or political subdivision to make the specified designations with reference to waters under their jurisdiction and control.

Accordingly, answering your specific question, it is my opinion and you are advised that the authority to designate a “designated bathing area,” “an area in which watercraft are prohibited,” “a designated bathing area,” water ski zone,” a “designated ski zone,” or a “marked racing course” as contained in Sections 1547.08, 1547.09, 1547.14, and 1547.20, Revised Code, respectively, is held by the state department, conservancy district, or political subdivision of the state having jurisdiction and control over the particular water involved.

Respectfully,

MARK McELROY
Attorney General