

OPINION NO. 90-093

Syllabus:

The Ohio Department of Natural Resources has no authority pursuant to R.C. 1506.10 and R.C. 1506.11 to issue a permit to conduct salvage operations upon an abandoned shipwreck located on or within the submerged lands of Lake Erie, title to which has passed to the State of Ohio pursuant to the Abandoned Shipwreck Act of 1987, where such operation effects a disposition of all or portions of such shipwreck.

**To: Joseph J. Sommer, Director, Ohio Department of Natural Resources,
Columbus Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1990

I have before me your request for my opinion concerning the authority of the Ohio Department of Natural Resources to issue a permit to conduct salvage operations upon an abandoned shipwreck. Your question may be stated as follows:

Does the Ohio Department of Natural Resources have the authority pursuant to R.C. 1506.10 and R.C. 1506.11 to issue a permit to conduct salvage operations on an abandoned shipwreck located on or within the submerged lands of Lake Erie, title to which has passed to the State of Ohio pursuant to the Abandoned Shipwreck Act of 1987?¹

The Ohio Department of Natural Resources (ODNR) was established by act of the General Assembly. R.C. 121.02(F). As a creature of statute, ODNR has only the authority expressly granted by statute and necessarily implied therefrom. *Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1973); 1989 Op. Att'y Gen. No. 89-024.

R.C. 1506.10 declares that the waters of Lake Erie "within the boundaries of the state, extending from the southerly shore of Lake Erie to the international boundary line between the United States and Canada," together with the soil beneath and the contents of such waters and soil, belong to the state "as proprietor in trust for the people of the state, for the public uses to which they may be adapted, subject to the powers of the United States government, to the public rights of navigation, water commerce, and fishery, and to the property rights of littoral owners...." Additionally, R.C. 1506.10 designates ODNR as "the state agency in all matters pertaining to the care, protection, and enforcement of the state's rights designated in this section" and provides that any order of the director of ODNR concerning such matters "is a rule or adjudication within the meaning of sections 119.01 to 119.13 of the Revised Code." There is no express authority within R.C. 1506.10 for the issuance by ODNR of a permit of any kind, nor do I find that the statute necessarily implies such authority. R.C. 1506.10 simply establishes the rights of the state in certain property and designates ODNR as its agent in the care, protection, and enforcement of such rights.

Turning now to R.C. 1506.11, I note that it was originally enacted as R.C. 123.031. 1955-1956 Ohio Laws 137 (Am. Sub. S.B. 187, eff. Oct. 13, 1955). As originally enacted, R.C. 123.031 provided authority for the state, upon the recommendation of the Director of Administrative Services, to issue a lease for the development or improvement of the Lake Erie territory² to "any owner of uplands fronting on Lake Erie." The purpose of Am. Sub. S.B. 187, as stated in its preamble, was "for...encouraging and providing for the private development of lakefront lands and the development, utilization, and conservation of said territory for the uses to which it may be adapted." In 1988, the General Assembly renumbered R.C. 123.031

¹ The Abandoned Shipwreck Act of 1987, 43 U.S.C. §§ 2101-2106 (1987), transferred the title to certain abandoned shipwrecks from the United States to the states in or on whose submerged lands the shipwrecks are located.

² "Territory" was defined in R.C. 123.031(A) as "the waters and the lands presently underlying the waters of Lake Erie and lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shore line and the harbor line or the line of commercial navigation where no harbor line has been established." 1955-1956 Ohio Laws 137 (Am. Sub. S.B. 187, eff. Oct. 13, 1955). The current definition of territory includes "the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada." R.C. 1506.11(A).

to R.C. 1506.11, expanded the availability of leases to "any person who wants to develop or improve part of the [Lake Erie] territory," and transferred the administration of this section from the Director of Administrative Services to the Director of ODNR. 1987-1988 Ohio Laws, Part I, 120 (Am. Sub. S.B. 70, eff. Dec. 13, 1988).³ Although neither R.C. 123.031 nor R.C. 1506.11 has ever expressly authorized a permit for salvage operations, R.C. 1506.11 authorizes the issuance of a permit for the development or improvement of all or any part of the state's interest in the Lake Erie territory. Specifically, R.C. 1506.11 provides:

Whenever the state, acting through the governor upon the recommendation of the director of natural resources, upon application of any person who wants to *develop or improve part of the territory*, and after notice as provided in this section, determines that any part of the territory can be developed and improved or the waters thereof used as specified in the application without impairment of the public right of navigation, water commerce, and fishery, a lease of all or any part of the state's interest therein may be entered into with the applicant, or a *permit may be issued for that purpose*, subject to the powers of the United States government and in accordance with the rules adopted by the director in accordance with Chapter 119. of the Revised Code, and without prejudice to the littoral rights of any owner of land fronting on Lake Erie, [with certain provisions concerning the necessity of such territory for the construction, maintenance or operation of breakwaters, piers, docks, wharves, bulkheads, connecting ways, water terminal facilities, and improvements and marginal highways, or in aid of navigation and water commerce, and concerning compliance with the regulation of permissible land use under a waterfront plan of the local authority].

R.C. 1506.11(B). Thus, R.C. 1506.11 authorizes ODNR to issue a permit to any person who wants to develop or improve part of the Lake Erie territory.

The General Assembly did not define "develop" or "improve" for purposes of R.C. 1506.11. In the absence of statutory definition, words must be accorded their natural, literal, common or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). "Develop" is defined by the dictionary in part as "[t]o realize the potentialities of.... To make more available or effective: *develop natural resources*." *American Heritage Dictionary* 389 (2d college ed. 1985) (emphasis in original). "Improve" is defined as "[t]o advance to a better state or quality; make better.... To make beneficial additions or changes...." *Id.* at 648. Thus, a permit may be issued pursuant to R.C. 1506.11 to any person who wants to make part of the Lake Erie territory more available or effective or to make beneficial changes or additions to such territory.

"Salvage," in its maritime sense, means "a compensation allowed to persons by whose assistance a ship or its cargo has been saved, in whole or in part, from impending danger, or recovered from actual loss, in cases of shipwreck, derelict, or recapture." *Black's Law Dictionary* 1340 (6th ed. 1990). By use of the term "salvage operations," I assume that you mean operations in which the abandoned ship or its cargo, or both, are recovered from the submerged lands of Lake Erie. The primary purpose of a salvage operation is to remove all or portions of the shipwreck from its underwater location. Although such removal conceivably could make a portion of the Lake Erie territory more available or effective or result in beneficial changes or additions thereto, a salvage operation effects the disposition of contents of the water and soil of Lake Erie. Therefore, for the reasons that follow, I find that R.C. 1506.11 does not authorize a permit to conduct salvage operations upon an abandoned shipwreck, title to which rests in the State of Ohio.

³ 1987-1988 Ohio Laws, Part I, 120 (Am. Sub. S.B. 70, eff. Dec. 13, 1988) also enacted a comprehensive coastal management program. See R.C. 1506.01-.09; R.C. 1506.12; R.C. 1506.99.

R.C. 1506.10, as discussed above, asserts the state's proprietary interest, in trust for the people of the state, in the waters of Lake Erie "together with the soil beneath and their contents." Thus, the General Assembly has expressly provided that the ownership of the contents of both the water and the soil of Lake Erie rests with the state. R.C. 1506.11 authorizes the state to issue leases and permits to develop or improve part of the Lake Erie territory, which is defined as "the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada." R.C. 1506.11(A). R.C. 1506.11 provides no authority to dispose of the contents of the water and soil of Lake Erie. Thus, a proposed project to develop or improve the Lake Erie territory that includes plans to dispose of contents of the water or soil of Lake Erie cannot be permitted under the authority of R.C. 1506.11. To the extent that a salvage operation effects a disposition of such contents, to wit, an abandoned shipwreck located on or within the submerged lands of Lake Erie, R.C. 1506.11 does not authorize a permit for such an operation.⁴

The determination that R.C. 1506.11 does not authorize a disposition of the contents of the water or soil of Lake Erie is supported by the fact that all leases and permits provided for by R.C. 1506.11 are expressly required by R.C. 1506.11(C)(2) to be executed in the manner provided for in R.C. 5101.13, which controls conveyances of real estate and interests therein sold on behalf of the state. Additionally, R.C. 1506.11(C)(2) expressly reserves all mineral rights in leased territory to the state.⁵

It is therefore my opinion, and you are hereby advised, that the Ohio Department of Natural Resources has no authority pursuant to R.C. 1506.10 and R.C. 1506.11 to issue a permit to conduct salvage operations upon an abandoned shipwreck located on or within the submerged lands of Lake Erie, title to which has passed to the State of Ohio pursuant to the Abandoned Shipwreck Act of 1987, where such operation effects a disposition of all or portions of such shipwreck.

⁴ Your question was limited to a determination of whether a permit for the salvage of an abandoned shipwreck owned by the state may be issued pursuant to R.C. 1506.10 and R.C. 1506.11. Thus, I do not offer an opinion as to whether such a permit may be issued pursuant to any other section of the Revised Code. I am, however, not aware of any Revised Code section which expressly authorizes such a permit.

⁵ Minerals are considered real estate until they are severed from the ground, whereupon they immediately become personal property. *Hirth v. Graham*, 50 Ohio St. 57, 33 N.E. 90 (1893). Thus, the provision of R.C. 1506.11 reserving all mineral rights to the state is evidence of the General Assembly's intention to authorize only a disposition of real property in the form of a lease of or permit to use such property.