

October 18, 2006

Kenneth L. Morckel, Director
Ohio Department of Public Safety
1970 West Broad Street
P.O. Box 182081
Columbus, Ohio 43218-2081

SYLLABUS:

2006-043

1. The sheriffs of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, Ottawa, and Sandusky counties are authorized to enforce the laws of Ohio on the waters of Lake Erie that are within the territorial boundaries of their respective counties.
2. Except where the boundary line of another county, or the boundary line between Ohio and Michigan, intervenes, the international boundary line between the United States of America and Canada is the northern boundary line for the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa and the sheriffs of these counties are authorized to enforce the laws of Ohio on the waters of Lake Erie as far north as the international boundary line.
3. The sheriff of Sandusky County is authorized to enforce the laws of Ohio on the waters of Lake Erie as far as the boundary lines between Sandusky County and the counties of Ottawa and Erie.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL

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OPINION NO. 2006-043

Kenneth L. Morckel, Director
Ohio Department of Public Safety
1970 West Broad Street
P.O. Box 182081
Columbus, Ohio 43218-2081

Dear Director Morckel:

You have requested an opinion whether a county sheriff may enforce the laws of Ohio on the waters of Lake Erie as far north as the international boundary line between the United States of America and Canada.¹ Based upon laws enacted by the General Assembly, we reach the

¹ In the Paris Peace Treaty of September 3, 1783, which is available at <http://www.yale.edu/lawweb/avalon/diplomacy/britain/paris.htm>, the United States of America and the United Kingdom established through Lake Erie an international boundary line between the United States of America and the British possessions to the north (now the sovereign nation of Canada, *see* note five, *infra*). Don Courtney Piper, *The International Law of the Great Lakes* 8-9 (1967). In light of boundary disputes, the parties to the Paris Peace Treaty subsequently authorized the establishment of a two-member commission to more fully describe the international boundary line established by the Paris Peace Treaty *Id.* at 10; *see also* Treaty of Ghent 1814, *available at* <http://www.yale.edu/lawweb/avalon/diplomacy/britain/ghent.htm>; Decision under the Treaty of Ghent, 8 Stat. 274 (1822). Through the Paris Peace Treaty, and as clarified in, the Treaty of Ghent the international boundary line through Lake Erie was established. Don Courtney Piper, *The International Law of the Great Lakes* 8-10 (1967).

Because of improvements in cartographic techniques and more extensive surveying, the United States of America and the United Kingdom concluded a treaty in 1908 authorizing the accurate delineation by the International Waterways Commission of the international boundary line established through Lake Erie by the Paris Peace Treaty and further clarified in the Treaty of Ghent. *Id.* at 15-17; *see also* Treaty between His Majesty and the United States of America respecting the Demarcation of the International Boundary between the United States and the Dominion of Canada, *available at* http://www.lexum.umontreal.ca/ca_us/en/cus.1908.299.en.html. Pursuant to this treaty, it was reaffirmed that the international boundary line through Lake Erie established by the Paris Peace Treaty and further clarified in the Treaty of Ghent serves as the international boundary line between the United States of America and Canada. Don Courtney Piper, *The International Law*

following conclusions. The sheriffs of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, Ottawa, and Sandusky counties are authorized to enforce the laws of Ohio on the waters of Lake Erie that are within the territorial boundaries of their respective counties. Further, except where the boundary line of another county, or the boundary line between Ohio and Michigan, intervenes, the international boundary line between the United States of America and Canada is the northern boundary line for the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa and the sheriffs of these counties are authorized to enforce the laws of Ohio on the waters of Lake Erie as far north as the international boundary line. Finally, the sheriff of Sandusky County is authorized to enforce the laws of Ohio on the waters of Lake Erie as far as the boundary lines between Sandusky County and the counties of Ottawa and Erie.

Counties that Border Lake Erie

We note at the outset that only 8 of Ohio's 88 counties have territory extending into the waters of Lake Erie.² These counties are Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas,

of the Great Lakes 16-17 (1967). Presently, the maintenance of the international boundary line through Lake Erie is the responsibility of the International Boundary Commission established by the United States of America and Canada in 1925. *Id.* at 17; *see also* Treaty between Canada and the United States of America to define more accurately and to complete the International Boundary between the two Countries, *available at* http://www.lexum.umontreal.ca/ca_us/cgi-bin/disp.pl/en/cus.1925.515.en.html.

Except where the boundary line between Ohio and Michigan intervenes, the international boundary line through Lake Erie between the United States of America and Canada is the northern boundary line of Ohio. *See* Northern Boundary Line Act, 5 Stat. 49 (1836); *see also* Ohio Const. of 1802, art. VII, § 6; *Edson v. Crangle*, 62 Ohio St. 49, 56 N.E. 647 (1900) (syllabus, paragraph one). *See generally* R.C. 1506.10 (“[i]t is hereby declared that the waters of Lake Erie consisting of the territory 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 their contents, do now belong and have always, since the organization of the state of Ohio, belonged to the state as proprietor in trust for the people of the state, for the public uses to which they may be adapted”).

² In Ohio's early years, Huron and Geauga counties bordered Lake Erie. *See generally* 1805 Ohio Laws 65 (eff. Mar. 1, 1806) (an Act for the division of Trumbull County, which erected the new county of Geauga with a northern boundary of Lake Erie); 1808 Ohio Laws 194 (eff. Feb. 7, 1809) (an Act to set off a part of the Connecticut western reserve into a separate county, which erected Huron County with a northern boundary contiguous with the northern boundary line of the United States); 1810 Ohio Laws 27 (eff. Jan. 22, 1811) (an Act to alter the west line of Cuyahoga, the east line of Huron, and to establish a west line to Portage County, which stated that the east line of Huron County extended to Lake Erie); 1814 Ohio Laws 113 (eff. Apr. 1, 1815) (an Act to organize the county of Huron, which added territory to Huron

Ottawa, and Sandusky. We will therefore only address the authority of the sheriffs of these 8 counties to enforce the laws of Ohio on the waters of Lake Erie as far north as the international boundary line between the United States of America and Canada.³

County that extended “due north to the north line of the state”); 1826 Ohio Laws 99 (eff. Jan. 29, 1827) (an Act to ascertain the boundaries of the counties of Ashtabula, Geauga, Cuyahoga, and Lorain, which declared that the northern boundary of Geauga County is “the northern boundary line of the United States, in Lake Erie”). However, the subsequent creation of new counties north of Geauga and Huron counties changed the northern border of these two counties from the state’s northern boundary line to the southern boundary lines of the newly created counties. *See generally* 1807 Ohio Laws 3 (June 7, 1807) (an Act for the division of Geauga and Trumbull counties, which made the southern boundary of Cuyahoga and Ashtabula counties the northern boundary of Geauga County); 1809 Ohio Laws 34 (eff. May 1, 1810) (an Act for the organization of the county of Cuyahoga, which attached to Cuyahoga County land from Huron County); 1822 Ohio Laws 5 (eff. Dec. 26, 1822) (an Act to erect the county of Lorain, which attached to Lorain County land from Huron County); 1837 Ohio Laws 60 (eff. Mar. 15, 1838) (an Act to erect the county of Erie, which attached to Erie County land from Huron County); 1839 Ohio Laws 99 (eff. Mar. 6, 1840) (an Act to erect the county of Ottawa, and to extend the limits of the county of Erie, which attached to Erie County land from Huron County); 1839 Ohio Laws 102 (eff. Mar. 6, 1840) (an Act to erect the county of Lake, which attached to Lake County land from Geauga County). The creation of the new counties north of Huron and Geauga counties thus resulted in Huron and Geauga counties no longer bordering Lake Erie.

³ We are aware that under certain circumstances the sheriffs of the remaining 80 counties may enforce the laws of Ohio within the boundaries of one of the 8 counties that has territory extending into the waters of Lake Erie. *See generally, e.g.*, R.C. 311.07 (a county sheriff may participate, as the director or member of an organized crime task force, in an investigation of organized criminal activity in any county or counties in this state under R.C. 177.01-.03); R.C. 311.29(A) (a county sheriff may enter into a contract “with the board of county commissioners of any contiguous county with the concurrence of the sheriff of the other county ... to perform any police function, exercise any police power, or render any police service in behalf of the ... county ... that the ... county ... may perform, exercise, or render”); R.C. 2935.03(D) (under certain conditions, a county sheriff may pursue, arrest, and detain a person outside the territorial boundaries of the county). Because it must be determined on a case-by-case basis whether a sheriff of a county that does not have territory extending into the waters of Lake Erie has the authority to enforce the laws of Ohio within the boundaries of one of the 8 counties that has territory extending into the waters of Lake Erie, we are unable in this opinion to definitely address in the abstract the authority of the remaining 80 sheriffs to enforce the laws of Ohio on the waters of Lake Erie as far north as the international boundary line between the United States of America and Canada. *See generally* 1993 Op. Att’y Gen. No. 93-033 (syllabus, paragraph one) (questions of fact “cannot be determined by means of an Attorney General opinion); 1983

Authority of a County Sheriff to Enforce the Laws of Ohio Throughout the Entire County

Let us begin by examining the statutory and common law authority of these county sheriffs to enforce the laws of Ohio throughout their counties. The primary duty of a county sheriff is to “preserve the public peace” in his county. R.C. 311.07(A), provides, in part, that “[e]ach sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within the sheriff’s knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas, and the sheriff shall commit such persons to jail in case they refuse to do so.” R.C. 2935.03(A) further authorizes a county sheriff to “arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the [county], a law of this state, an ordinance of a municipal corporation, or a resolution of a township.”

In addition, R.C. 311.08(A) states that, “[t]he sheriff shall ... exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law.” Under the common law, “[t]he sheriff is the chief law enforcement officer in the county, with jurisdiction coextensive with the county.” *In re Sulzmann*, 125 Ohio St. 594, 597, 183 N.E. 531 (1932); *accord* 1990 Op. Att’y Gen. No. 90-091 at 2-391; 1960 Op. Att’y Gen. No. 1309, p. 310 at 312. In this capacity, a county sheriff is empowered to investigate all crimes that occur within his jurisdiction and pursue and capture the perpetrators of those crimes:

The common law powers of a sheriff in Ohio have been defined. It is the duty of the sheriff “*** to preserve the peace in his bailiwick or county. To this end he is the first man within the county, and it is incident to his office that he apprehend and commit to prison all persons who break or attempt to break the peace. He is bound, *ex officio*, to pursue and take all traitors, murderers, felons, and rioters.”

United States v. Laub Baking Co., 283 F. Supp. 217, 220 (N.D. Ohio 1968) (quoting *State ex rel. Attorney General v. Ganson*, 58 Ohio St. 313, 320, 50 N.E. 907 (1898)); *see* 1998 Op. Att’y Gen. No. 98-033 at 2-187 (“the duty to preserve the public peace necessarily requires the county sheriff and his deputies to investigate crimes that occur within the county”); 1997 Op. Att’y Gen. No. 97-046 at 2-289 (“all law enforcement officers have authority to investigate crimes that occur within their jurisdiction as part of their broadly defined duties to preserve or keep the peace”); 1994 Op. Att’y Gen. No. 94-081 at 2-403 (“a county sheriff is authorized to investigate a homicide that occurs within his county”); 1988 Op. Att’y Gen. No. 88-035 at 2-157 (in order to preserve the peace law enforcement officers have the authority “to investigate crimes that occur within their jurisdiction”). The sheriffs of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, Ottawa, and Sandusky counties are thus authorized by statute and the common law to enforce the

Op. Att’y Gen. No. 83-057 at 2-232 (the office of the Attorney General “is not equipped to serve as a fact-finding body”).

laws of Ohio throughout the entire territory of their respective counties. *In re Sulzmann*, 125 Ohio St. at 597, 183 N.E. 531; 1990 Op. Att’y Gen. No. 90-091 at 2-391; 1990 Op. Att’y Gen. No. 90-012 at 2-50.

Territorial Boundaries of the Counties that Border Lake Erie

Let us now consider whether the sheriffs of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, Ottawa, and Sandusky counties are authorized to enforce the laws of Ohio on the waters of Lake Erie. Because these sheriffs may exercise their authority to enforce the laws of Ohio throughout the entire territory of their respective counties, we must determine the northern boundary line of each of these sheriff’s counties by examining the legislative history of the provisions of law creating Ohio’s counties.

Throughout the nineteenth century numerous Acts enacted by the General Assembly established and changed the territorial boundaries of the counties of Ohio. *See* 1966 Op. Att’y Gen. No. 66-001 at 2-2; *see also* Williams’ Edition of the Revised Statutes of Ohio (1883), vol. III, at 449-548 (setting forth a chronological list of the Acts of the General Assembly creating the counties of Ohio). *See generally Franklin Real Estate Co. v. Henderson*, 64 Ohio Law Abs. 83, 88, 110 N.E.2d 817 (C.P. Morgan County 1952) (“a county is the creature and political subdivision of the state, that the law of the state fixes and determines the geographical limits of a county, and that in Ohio this sovereign power of the state, once exercised, could not and can not be abridged or otherwise affected by any subsequent act except its own”). *See generally also Manchester v. Massachusetts*, 139 U.S. 240, 264 (1891) (“[w]ithin what are generally recognized as the territorial limits of States by the law of nations, a State can define its boundaries on the sea and the boundaries of its counties; and by this test the Commonwealth of Massachusetts can include Buzzard’s Bay within the limits of its counties”).

These Acts provide that, except where the boundary line of another county, or the boundary line between Ohio and Michigan, intervenes, the northern boundary line of the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa is contiguous with the international boundary line between the United States of America and Canada. *See, e.g.*, 1826 Ohio Laws 99 (eff. Jan. 29, 1827) (an Act to ascertain the boundaries of the counties of Ashtabula, Geauga, Cuyahoga, and Lorain, which declared that “the northern boundary line of the United States, in Lake Erie” is the northern boundary line for the counties of Ashtabula, Cuyahoga, and Lorain); 1834-1835 Ohio Laws 5 (eff. June 20, 1835) (an Act to erect the county of Lucas, which established the “Boundary line of the State” as the northern boundary line for Lucas County); 1835-1836 Ohio Laws 470 (eff. Mar. 14, 1836) (an Act to amend the Act entitled “An act to establish the county of Lucas,” passed June 20th, 1835, which established the “boundary line of the State” as the northern boundary line for Lucas County); 1837 Ohio Laws 60 (eff. Mar. 15, 1838) (an Act to erect the county of Erie, which established the “Canada line” as the northern boundary line for Erie County); 1839 Ohio Laws 99 (eff. Mar. 6, 1840) (an Act to erect the county of Ottawa, and to extend the limits of the county of Erie, which established the

line between Ohio and Michigan⁴ and the “line between the British and American governments in Lake Erie”⁵ as the northern boundary line for Ottawa County); 1839 Ohio Laws 102 (eff. Mar. 6, 1840) (an Act to erect the county of Lake, which established the “Canada line” as the northern boundary line for Lake County); 1849 Ohio Laws 682 (eff. Feb. 28, 1850) (an Act to create the county of Fulton, which established the line between Ohio and Michigan and the “line between the American and British Governments in Lake Erie” as the northern boundary line for Lucas County).

These Acts provided further that no parts of the boundary lines of Sandusky County are contiguous with the international boundary line between the United States of America and Canada. Instead, the territory of this county that is beneath the waters of Lake Erie is bordered by Ottawa and Erie counties.⁶ See 1837 Ohio Laws 60 (eff. Mar. 15, 1838) (an Act to erect the

⁴ The boundary line between Ohio and Michigan is no longer part of the northern boundary of Ottawa County. See 1849 Ohio Laws 682 (eff. Feb. 28, 1850) (an Act to create the county of Fulton, which restored to Lucas County its constitutional amount of territory).

⁵ As explained in note one, *supra*, the international boundary line between the United States of America and Canada was established by the governments of the United States of America and the United Kingdom in the Paris Peace Treaty. Pursuant to various Acts passed by the Parliament of the United Kingdom and a Proclamation issued by Queen Elizabeth II under the Great Seal of Canada, Canada was made a fully sovereign nation on April 17, 1982. See, e.g., The British North American Act, 1867 (establishing the modern nation of Canada), available at http://en.wikisource.org/wiki/British_North_America_Act_1867; The Constitution Act, 1982 (severing all remaining constitutional and legislative ties between the United Kingdom and Canada), available at http://laws.justice.gc.ca/en/const/annex_e.html; Constitution Amendment Proclamation of April 17, 1982 (proclaiming in force the The Constitution Act, 1982), available at http://en.wikisource.org/wiki/Proclamation_of_the_Constitution_Act_1982. Accordingly, language in the enactments of the General Assembly creating the boundaries of the counties that cites to the line between the British and American Governments in Lake Erie signifies the international boundary line between the United States of America and Canada.

⁶ When Sandusky County was created, the territory of the county extended through Lake Erie to the international boundary line between the United States of America and the British possessions to the north (now Canada, see note five, *supra*). See 1819 Ohio Laws 90 (eff. Apr. 1, 1820) (an Act for the erection of certain counties therein named, which established the “northern boundary of the state” as the northern boundary of Sandusky County); note one, *supra* (Ohio’s northern boundary line is the international boundary line between the United States of America and Canada). Subsequent Acts of the General Assembly, however, created the counties of Erie and Ottawa between Sandusky County and Ohio’s northern boundary line. See 1837 Ohio Laws 60 (eff. Mar. 15, 1838) (an Act to erect the county of Erie); 1839 Ohio Laws 99 (eff. March 6, 1840) (an Act to erect the county of Ottawa, and to extend the limits of the county of

county of Erie, which established the boundaries for Erie County); 1839 Ohio Laws 99 (eff. March 6, 1840) (an Act to erect the county of Ottawa, and to extend the limits of the county of Erie, which attached to Ottawa County land from Sandusky County).

Accordingly, prior to the revision and consolidation of the statutes of Ohio into the Revised Statutes of Ohio in 1880,⁷ the General Assembly established that, except where the boundary line of another county, or the boundary line between Ohio and Michigan, intervenes, the international boundary line between the United States of America and Canada is the northern boundary line for the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa. The General Assembly also established boundaries for Sandusky County that did not extend to the international boundary line between the United States of America and Canada.

When the codification of 1880 occurred, the laws establishing the boundaries of the counties were omitted from the Revised Statutes of Ohio, but not repealed. *See* R.S. 7437 of the 1880 Revised Statutes of Ohio (published by H.W. Derby & Co. for the State of Ohio) (setting forth the laws repealed when the statutes of Ohio were revised and consolidated). Subsequent publishers of the Revised Statutes of Ohio who were cognizant of this omission assigned section numbers to the uncodified provisions creating the borders of the counties and appended them as part five of the Revised Statutes of Ohio. These provisions were initially included in R.S. 7916-21 through R.S. 7916-583. *See* Smith & Benedict's Edition of the Revised Statutes of Ohio (1889) (setting forth the Revised Statutes of Ohio in force on January 1, 1890). Later publishers of the Revised Statutes assigned new section numbers to the provisions (R.S. 23-8 through R.S. 23-187) and placed them among the codified laws. *See* Bates' Edition of the Revised Statutes of Ohio (1897) (setting forth the Revised Statutes of Ohio in force on January 1, 1898).

In 1910 the Revised Statutes of Ohio underwent a complete reorganization by the General Assembly, which culminated in their formal reenactment and recodification as the General Code. *See* S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing 1910). *See generally* 1910 Ohio Laws 39 (H.B. 348, approved Mar. 29, 1910) (“[t]he statutes shall be published by the state and shall be officially designated as ‘The General Code’”); 1906 Ohio Laws 221 (S.B. 31, passed Apr. 2, 1906) (“[t]o provide for the revision and consolidation of the statute laws of Ohio”). Again, the laws creating the boundaries of the counties were not codified or repealed. *See* G.C.

Erie). With the creation of these two new counties, the boundary lines of Sandusky County no longer extend to Ohio's northern boundary line.

⁷ In 1880 the statutes of Ohio were revised, and consolidated into the Revised Statutes of Ohio. *See generally* 1880 Revised Statutes of Ohio at 183 (published by H.W. Derby & Co. (1879) for the State of Ohio) (setting forth an Act to revise and consolidate the general statutes of Ohio); 1879 Ohio Laws 192 (H.B. 1083, eff. June 23, 1879) (an Act to provide for printing and distributing the Revised Statutes of Ohio); 1874 Ohio Laws, Second Session, 87 (eff. Mar. 27, 1875) (an Act to provide for the revision and consolidation of the statute laws of Ohio).

13767 of the 1910 General Code (setting forth the sections of the Revised Statutes and Acts of the General Assembly that were repealed when the General Code was enacted into law).

The uncodified provisions providing for the creation of the counties were, however, added as part of an appendix to the General Code.⁸ *See generally State ex rel. Forchheimer v. LeBlond*, 108 Ohio St. 41, 140 N.E. 491 (1923) (syllabus, paragraph four) (“[t]he Appendix to the General Code is a part of the General Code to all intents and purposes, and a reference to parts of such appendix by section numbers will not be disregarded as unintelligible and meaningless”). These provisions were included in G.C. 14357 through G.C. 14536.

In the 1953 recodification of the Revised Code, 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953), every section of the General Code was repealed except for certain enumerated sections. G.C. 14357 through G.C. 14536 were among a handful of sections that were not repealed:

To provide for the recodification, renumbering, and form revision of the laws of Ohio and for that purpose to enact sections 1.01 to 9.99 and 101.01 to 6155.13, inclusive, of the Revised Code; and *to repeal sections 1 to 15290, inclusive, of the General Code, excepting the following sections*

⁸ In 1911 the General Assembly authorized the Attorney General to prepare an official appendix to the General Code containing Acts and parts of Acts not included in the General Code:

Be it enacted by the General Assembly of the State of Ohio:

Section 1. That section 779 of the General Code be supplemented by the enactment of supplemental section to be known as section 779-2 as follows:

Sec. 779-2. The attorney general shall prepare an appendix to the General Code. He shall collate and classify such acts and parts of acts not included in the General Code, or enacted subsequent to the adoption thereof, as he deems proper, and arrange them under suitable titles, divisions, chapters and sections with head notes briefly expressive of the matter contained and with marginal notes of the contents of each section with reference to the original act from which it is compiled. He shall prepare an index to every part of the appendix so compiled and arranged. The expense of the preparation of such appendix and index thereto shall be paid by the attorney general from moneys appropriated for special counsel. Such appendix shall be printed, bound, sold and the proceeds thereof distributed as provided in the last preceding section. The contract therefor need not be advertised and let as provided in such section if the printing and binding can be obtained at a rate of cost not to exceed that paid for the General Code.

1911 Ohio Laws 46, 46-47 (H.B. 131, approved Mar. 31, 1911).

which are of a temporary or special nature and are being eliminated from the Revised Code: ... 14357 to 14536, inclusive, ... of the General Code.
(Emphasis added.)

Am. H.B. 1 (preamble) (reprinted on page one of the 1953 Ohio Revised Code).

The General Assembly, however, chose not to codify within the Revised Code the provisions of law contained in G.C. 14357 through G.C. 14536. Am. H.B. 1 (preamble). This means that these provisions remain uncodified legislation that is nevertheless legally binding and is of the same force and effect as codified legislation. *See In re McCrary*, 75 Ohio App. 3d 601, 607, 600 N.E.2d 347 (Madison County 1991) (a court has a “duty to enforce the uncodified provisions of [a bill] with the same vigor as a codified statutory provision”), *appeal dismissed*, 64 Ohio St. 3d 1427, 594 N.E.2d 969 (1992); *City of Reynoldsburg v. Wesley*, 39 Ohio Misc. 166, 166, 316 N.E.2d 926 (Franklin County Mun. Ct. 1974) (“even though [a section of an act] was not given a Revised Code section number, it is part of the law”), *disapproved on other grounds by City of Columbus v. Vest*, 42 Ohio App. 2d 83, 330 N.E.2d 726 (Franklin County 1974); 1985 Op. Att’y Gen. No. 85-019 at 2-78 (the effectiveness as law of a statement of law enacted by the General Assembly “is not affected by the fact that it is contained in an uncodified provision”). Hence, under the uncodified provisions of law creating the counties set forth in G.C. 14357 through G.C. 14536, the international boundary line between the United States of America and Canada is the northern boundary line for the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa unless the boundary line of another county, or the boundary line between Ohio and Michigan, intervenes.⁹ In addition, these provisions establish that the boundary of Sandusky County through Lake Erie is contiguous with the boundary lines between Sandusky County and the counties of Ottawa and Erie.¹⁰

Because the international boundary line between the United States of America and Canada is the northern boundary line for the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa, the sheriffs of these counties are authorized to enforce the laws of Ohio on the waters of Lake Erie as far north as the international boundary line unless the boundary line of another county, or the boundary line between Ohio and Michigan, intervenes. Also, since the boundary of Sandusky County through Lake Erie is contiguous with the boundary lines between Sandusky County and the counties of Ottawa and Erie, the sheriff of Sandusky

⁹ The northern boundary lines for the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa are set forth in G.C. 14391 (Erie), G.C. 14397 (Lucas), G.C. 14412 (Lake), G.C. 14416 (Lucas), G.C. 14417 (Lucas), G.C. 14432 (Ottawa), and G.C. 14533 (Ashtabula, Cuyahoga, and Lorain).

¹⁰ The northern boundary line of Sandusky County is established by G.C. 14391 and G.C. 14432.

County is authorized to enforce the laws of Ohio on the waters of Lake Erie as far as those boundary lines.¹¹

R.C. 1506.10 Does Not Extinguish or Limit the Authority of a County Sheriff to Enforce the Laws of Ohio on the Waters of Lake Erie

These county sheriffs are empowered to enforce the laws of Ohio on the waters of Lake Erie even though the land beneath the waters of Lake Erie belongs to, or is under the control of, the state. See R.C. 5503.02(D)(1) (“[t]he powers and duties conferred on the [Ohio State Highway Patrol]¹² are supplementary to, and in no way a limitation on, the powers and duties of sheriffs or other peace officers of the state” (footnote added)); 1989 Op. Att’y Gen. No. 89-108 at 2-532 (“the State Highway Patrol’s authority to enforce criminal laws on state properties is not exclusive” and, as such, “the fact that the [patrol] is authorized to enforce criminal laws on state properties does not, in itself, restrict the authority of a public children services agency to investigate reports of child abuse or neglect or threats of child abuse or neglect at state facilities”); 1971 Op. Att’y Gen. No. 71-053 (letter from the State Highway Patrol acknowledges that, when the Patrol undertakes an investigation, there may be a concurrent investigation by another agency); 1963 Op. Att’y Gen. No. 113, p. 194 (syllabus, paragraph three) (“[t]he Ohio State Highway Patrol, the Franklin County Sheriff’s Department, and the Columbus City Police Department have concurrent jurisdiction for the preservation of peace at the Ohio State Fairgrounds throughout the entire year and each of these organizations has equal duty to respond to requests for police protection at the fairgrounds”).

With respect to the title, ownership, and stewardship of the lands beneath the waters of Lake Erie, R.C. 1506.10 provides, in part, as follows:

It is hereby declared that the waters of Lake Erie consisting of the territory 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 their contents, do now belong and have always, since the organization of the state of Ohio, belonged 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*

¹¹ As explained in note three, *supra*, in certain instances a county sheriff may enforce the laws of Ohio in another county. There may thus be instances in which the sheriff of Sandusky County may enforce in the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa the laws of Ohio on the waters of Lake Erie as far north as the international boundary line between the United States of America and Canada.

¹² R.C. 5503.02(A) authorizes the Superintendent of the State Highway Patrol or any state highway patrol trooper to “enforce the criminal laws on all state properties and state institutions, owned or leased by the state[.]”

navigation, water commerce, and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing past their lands....

The department of natural resources is hereby designated as the state agency in all matters pertaining to the care, protection, and enforcement of the state's rights designated in this section.

Any order of the director of Natural Resources in any matter pertaining to the care, protection, and enforcement of the state's rights in that territory is a rule or adjudication within the meaning of [R.C. 119.01-.13]. (Emphasis added.)

Thus, pursuant to R.C. 1506.10, the State of Ohio holds title to the land beneath the waters of Lake Erie in trust for the people of Ohio. *See generally* 43 U.S.C. § 1311(a) (“[i]t is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters¹³ within the boundaries of the respective States ... be ... recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof” (footnote added)); 2000 Op. Att’y Gen. No. 2000-047 at 2-286 (“[i]n Ohio the state holds title to land under the waters of Lake Erie within the boundaries of the state”). R.C. 1506.10 also places such lands under the stewardship of the Department of Natural Resources (DNR).

Although DNR is responsible for the care, protection, and enforcement of the state's rights designated in R.C. 1506.10, such responsibility does not include a grant of exclusive jurisdiction as to the enforcement of the laws of Ohio on the waters of Lake Erie. The purpose of R.C. 1506.10 is not to provide for the enforcement of laws on the waters of Lake Erie. Rather, its purpose is to delegate authority to DNR to administer on behalf of the state matters pertaining to the care, protection, and enforcement of the state's rights in the waters of Lake Erie and the land beneath such waters. *See State v. Cleveland & Pittsburgh R.R. Co.*, 94 Ohio St. 61, 113 N.E. 677 (1916) (syllabus, paragraph six) (“[t]he ownership of the waters of Lake Erie and of the land under them within the state is a matter of public concern. The trust with which they are held is governmental, and the state, as trustee for the people, cannot by acquiescence or otherwise abandon the trust property or permit a diversion of it to private uses different from the object for which the trust was created”); *see also State ex rel. Squire v. City of Cleveland*, 150 Ohio St. 303, 82 N.E.2d 709 (1948) (the State of Ohio, as trustee of the land beneath Lake Erie for the people of Ohio, could, by proper legislative action, carry out its specific duty of protecting the

¹³ For purposes of 43 U.S.C. § 1311, the term “lands beneath navigable waters” means, *inter alia*, “all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and water thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction[.]” 43 U.S.C. § 1301(a).

trust estate and regulating its use); *see, e.g.*, 1974 Op. Att’y Gen. No. 74-081 (syllabus, paragraph one) (“[t]he director of natural resources has authority under R.C. 1505.07 to issue an exclusive mineral lease for a portion of the bed of Lake Erie for any reasonable term of years even though actual extraction of the minerals may not be contemplated, if he determines that the issuance of such lease does not violate the public trust doctrine under which the soil and its contents under the state’s territorial waters of Lake Erie are held in trust by the State of Ohio for the people of Ohio”).

Moreover, nothing in the language of R.C. 1506.10 or elsewhere in the Revised Code states DNR is the governmental agency solely or exclusively responsible for enforcing the laws of Ohio on the waters of Lake Erie. In fact, various statutes suggest the contrary.

Pursuant to R.C. 1503.29, R.C. 1517.10, R.C. 1541.10, and R.C. 1547.521, the jurisdiction of DNR’s forest officers, preserve officers, park officers, and watercraft officers is expressly made concurrent with that of peace officers of the county, township, or municipal corporation in which the violation occurs. 1996 Op. Att’y Gen. No. 96-014 at 2-59; *see also* R.C. 1531.16 (county sheriffs and deputy sheriffs “shall have the power conferred upon wildlife officers”¹⁴). Under these statutes, if a violation of Ohio law occurs on the waters of Lake Erie, the jurisdiction of DNR’s officers is concurrent with that of the sheriff of the county in which the violation occurred since, as stated previously, sheriffs are authorized to enforce the laws of Ohio on property that belongs to, or is under the control of, the state. Accordingly, notwithstanding R.C. 1506.10, the sheriffs of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, Ottawa, and Sandusky counties are authorized to enforce the laws of Ohio on the waters of Lake Erie that are within the territorial boundaries of their respective counties. *See generally Thomas v. Sanders*, 65 Ohio App. 2d 5, 10, 413 N.E.2d 1224 (Erie County 1979) (there is nothing inconsistent with a city’s corporate limits extending to the center of a bay that is part of Lake Erie and “the holding that the same territory is held in trust by the state”); *City of Toledo v. Kilburn*, 71 Ohio Misc. 2d 40, 46, 654 N.E.2d 202 (Toledo Mun. Ct. 1995) (there is nothing inconsistent with a city’s corporate limits extending two miles out to the center of a bay that is part of Lake Erie and “the holding that the same territory is held in trust by the state”).

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

¹⁴ Pursuant to R.C. 1531.13, wildlife officers “have the authority specified under [R.C. 2935.03] for peace officers of the department of natural resources for the purpose of enforcing the criminal laws of the state on any property owned, controlled, maintained, or administered by the department of natural resources[.]” *See generally* R.C. 2935.03(A)(2) (“[a] peace officer of the department of natural resources ... shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the peace officer’s ... territorial jurisdiction, a law of this state”).

1. The sheriffs of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, Ottawa, and Sandusky counties are authorized to enforce the laws of Ohio on the waters of Lake Erie that are within the territorial boundaries of their respective counties.
2. Except where the boundary line of another county, or the boundary line between Ohio and Michigan, intervenes, the international boundary line between the United States of America and Canada is the northern boundary line for the counties of Ashtabula, Cuyahoga, Erie, Lake, Lorain, Lucas, and Ottawa and the sheriffs of these counties are authorized to enforce the laws of Ohio on the waters of Lake Erie as far north as the international boundary line.
3. The sheriff of Sandusky County is authorized to enforce the laws of Ohio on the waters of Lake Erie as far as the boundary lines between Sandusky County and the counties of Ottawa and Erie.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General