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AS TO THE RESERVATION OF MINERAL RIGHTS IN SALES OF PUBLIC OR OTHER STATE LANDS DOES NOT APPLY TO A DEED FOR CONVEYANCE OF LANDS BY THE DIRECTOR OF PUBLIC WORKS—§155.01., R.C.—A.H.B. No. 139—100th G.A.

SYLLABUS:

The provision of Section 155.01, Revised Code, as to the reservation of mineral rights in sales of public or other state lands does not apply to a deed for conveyance of lands by the director of public works under Amended House Bill No. 139 of the 100th General Assembly.

Columbus, Ohio, November 23, 1960

Hon. T. J. Kauer, Director
Department of Public Works, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"May we direct your attention to Amended House Bill No. 139, passed by the 100th General Assembly on April 16, 1953, for the purpose of disposing of certain State-owned lands in the Village of Elmwood Place, Hamilton County, Ohio. This Bill provides, among other things, that the Auditor of State, upon payment of the purchase money to the General Revenue fund, draft a deed in 'fee simple absolute,' and 'deliver to the person or persons entitled thereto.'

"The Auditor of State has withheld the preparation of the deeds pending a legal opinion as to his right to issue such a deed without reserving to the State of Ohio the mineral rights, as provided by Section 155.01 Revised Code of Ohio.

"This Department contends that the Legislature did not intend to reserve the mineral rights by reason of the very language employed. In support of our contention we attach herewith a memorandum on the subject presenting our views, with various citations to support them.

"Your opinion as to the right of the State of Ohio to issue a deed, under Amended House Bill No. 139, hereinbefore referred to, without reserving unto itself the mineral rights as provided by Section 155.01 Revised Code, is requested."

Amended House Bill No. 139 of the 100th General Assembly, effective April 30, 1953, provides for the sale of certain state lands at public auction by the director of public works. The bill provides:

"* * * the superintendent of public works as director thereof shall commence to sell at public auction as hereinafter provided all the right, title and interest of the state of Ohio in the following described parcels of real estate, which is no longer needed for any public purpose of the state:

"* * *"

"The superintendent of public works may sell said lands as an entirety or in such tracts, parcels, or lots as he may consider most advantageous; * * *. The full purchase money shall be payable in cash or certified check, on the day of sale. Upon payment of the purchase money to the general fund of the state a deed or

deeds to the purchaser or purchasers *conveying in fee simple absolute* the parcel or parcels purchased shall be drafted by the auditor of state, * * *." (Emphasis added)

The question to be determined is whether the sale of lands under Amended House Bill No. 139, *supra*, is subject to the provisions of Section 155.01, Revised Code, which reads:

"All sales and leases of public or other state lands, except canal lands other than reservoirs and lands appurtenant and adjacent to reservoirs, shall exclude all oil, gas, coal, or other minerals on or under such lands, except lands specifically leased for such purposes separate and apart from surface leases, and all deeds for such lands executed and delivered by the state shall expressly reserve to the state all gas, oil, coal, or other minerals on or under such lands with the right of entry in and upon said premises for the purpose of selling or leasing the same, or prosecuting, developing, or operating the same."

As I understand it, all of the lands here in question are "public or other state lands" and some of these lands are canal lands. You do not state the nature of the canal lands, however, the sale of any canal lands which are not reservoirs or lands appurtenant or adjacent to reservoirs is not subject to Section 155.01, *supra*, under the specific terms of that statute. The remainder of this opinion is, therefore, directed only to lands not so specifically excepted.

Amended House Bill No. 139, *supra*, clearly provides that *all the right, title and interest of the state of Ohio* in the lands in question shall be sold. If *all* right, title and interest is to be sold, then a reservation of mineral rights is not contemplated, and unless the provisions of 155.01, *supra*, are applicable the deeds should not contain reservations of mineral right. Thus, if the strict terms of Amended House Bill No. 139, *supra*, are to be followed, it will be necessary to ignore the provisions of Section 155.01, *supra*, since a definite conflict exists between the two laws.

In Opinion No. 3147, Opinions of the Attorney General for 1958, page 730, my predecessor had occasion to consider a question similar to that here concerned. The statutes under consideration in that opinion were Sections 5501.11 and 5501.111, Revised Code, under which the director of highways was authorized to convey certain state lands, and the question was whether the provision of Section 155.01, *supra*, as to reservation of mineral rights, was applicable. Starting at page 734 of that opinion it is stated:

"Section 5501.111, Revised Code, empowers the Director to purchase private property in fee simple when the acquisition of a part of said land needed for highway purposes will result in substantial damages to the residue by severance, controlled access or isolation. This section provides a very practical means whereby the Director of Highways can conserve the taxpayers' money appropriated for highway purposes, by recouping the purchase price or a substantial portion thereof, by selling the property to the highest bidder. The Director acquires all the rights in the property and the statute specifically authorizes and empowers the Director to sell *all* the right, title and interest of the State of Ohio in any part of the land not required for highway purposes. The General Assembly granted authority in this section to the Director to sell all the right, title and interest, and there is no express reservation of mineral rights or no reference to Section 155.01, Revised Code. The fact that the 101st General Assembly in passing this act did not require a reservation of mineral rights or make reference to Section 155.01, Revised Code, was no oversight on its part. This same session of the legislature that passed the act, Section 5501.111, Revised Code, on June 21, 1955, two days later, on June 23, 1955, passed a new act entitled 'Leasing of lakefront land for private improvement.' This act is now Section 123.031, Revised Code.

"Said section provides in part as follows:

"'All leases made hereunder shall be executed in the manner provided by Section 5301.13 of the Revised Code, and shall contain, in addition to the provisions required herein, a reservation to the state of all mineral rights as required by Section 155.01 of the Revised Code. * * *'

"There can be no doubt that the legislature intended to authorize the Director of Highways to convey all the property rights to the highest bidder with no reservation to the State of mineral rights.

"Furthermore, it is a well settled principle of law in Ohio that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision. See *Acme Engr co. v. Jones*, 150 Ohio St., 423; *State, ex rel. Steller, et al., Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414; *State, ex rel. Elliott Co., v. Connor, Supt.* 123 Ohio St., 310.

"Both amended Section 5501.11 and Section 5501.111, Revised Code, are special statutes applying to a specific subject matter, while Section 155.01, Revised Code, is a general statute.

"Also it should be noted that amended Section 5501.11 and Section 5501.111, Revised Code, are later expressions of the

legislative will than Section 155.01, Revised Code, and the later enactments must be controlling.

"Therefore, it is my opinion, and you are so advised that the provision of Section 155.01, Revised Code, requiring all deeds for public or other state lands expressly reserve to the state all gas, oil, coal, or other minerals, on or under such property does not apply to a deed for conveyance of property by the Director of Highways under the provisions of Section 5501.11 or Section 5501.111, Revised Code."

As stated in Opinion No. 3147, *supra*, Section 155.01, Revised Code, is a general statute. Amended House Bill No. 139, *supra*, on the other hand, is a special statute applying to a specific subject matter. Also, Amended House Bill No. 139, *supra*, enacted in 1953, is a latter expression of the legislative will, since Section 155.01, *supra*, was originally enacted in 1915. I conclude, therefore, that the reasoning of Opinion No. 3147, *supra*, as to the applicability of Section 155.01, *supra*, may be applied to the instant case and that said section does not apply to sales of land under Amended House Bill No. 139, *supra*.

Accordingly, it is my opinion and you are advised that the provision of Section 155.01, Revised Code, as to the reservation of mineral rights in sales of public or other state lands does not apply to a deed for conveyance of lands by the director of public works under Amended House Bill No. 139 of the 100th General Assembly.

Respectfully,
MARK McELROY
Attorney General