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MUSKINGUM WATERSHED CONSERVANCY DISTRICT — CANNOT SPEND CONSERVANCY DISTRICT RECREATIONAL FUNDS TO ADVERTISE AND TO ENTERTAIN PERSONS INVITED BY DISTRICT OFFICIALS TO INSPECT WORKS OF DISTRICT AND ITS RECREATIONAL FACILITIES.

SYLLABUS:

The Muskingum Watershed Conservancy District can not spend conservancy district recreational funds for advertising and the entertainment of persons invited by the district officials to inspect the works of the Muskingum Watershed Conservancy District and its recreational facilities.

Columbus, Ohio, November 6, 1944

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your request for my opinion, which reads as follows:

> "We are inclosing herewith an opinion of the Attorneys for The Muskingum Watershed Conservancy District, together with a letter from the Secretary-Treasurer of said District.
>
> Said documents contain the argument that the ruling embodied in Attorney General's Opinion No. 2573 of June 9, 1938, should be revised in view of the advanced operations of recreational facilities in the District that require promotional advertising in order to increase the revenue from such recreational facilities.
>
> May we request that you examine the inclosures and the ruling contained in Opinion No. 2573, and give us your opinion as to the legality of expending the District's recreational fund revenues through advertising and entertainment of persons invited by the District officials to inspect the Conservancy works and its recreational facilities."

This involves the interpretation of Section 6828-24a of the General Code, which reads in part as follows:

> "The board of directors may construct, improve, operate, maintain, and protect parks, parkways, forest preserves, bathing beaches, playgrounds, and other recreational facilities upon the lands owned or controlled by the district, and may acquire by purchase or appropriation property, additional to that required for the purposes for which the district was incorporated, in order to provide for the protection, more adequate development, and fuller public use and enjoyment of such improvements and facilities. The board shall have authority to impose and collect charges for the use of the properties, improvements, and facilities of the district for recreational purposes. In case the revenues derived or to be derived from the properties, improvements, and facilities of the district used or acquired for recreational purposes are not sufficient for the purposes of this section, the board, with the approval of the court, may provide for the payment of obligations incurred under authority of this section by either or both of the following methods, as determined by the court: (1) the levy of taxes upon all the taxable property of the

district or (2) the levy of special assessments upon public corporations having lands within the district; * * *."

This section was not originally a part of the Conservancy Act but became effective July 19, 1937 and has for its purpose the enabling of the "district" to enter into recreational fields related to the main function of such "districts".

The basis for bringing a conservancy district into existence is set forth in Section 6828-2 of the General Code, which provides as follows:

"Any area or areas situated in one or more counties may be organized as a conservancy district, in the manner and subject to the conditions provided by this chapter of the General Code, for all or any of the following purposes:

(a) of preventing floods;

(b) of regulating stream channels by changing, widening and deepening the same;

(c) of reclaiming or of filling wet and overflowed lands;

(d) of providing for irrigation where it may be needed;

(e) of regulating the flow of streams and conserving the waters thereof;

(f) of diverting, or in whole or in part eliminating water courses;

(g) of providing a water supply for domestic, industrial, and public use;

(h) of providing for the collection and disposal of sewage and other liquid wastes produced within the district;

But nothing herein shall be deemed to terminate the existence of any conservancy district heretofore organized entirely within a single county.

Subject to the provisions of this section, the purposes of a conservancy district may be altered by the same procedure as provided for the establishment of such a district."

No direct reference is here made to recreationad facilities although this section, in its present form, became effective on the same day as Sec-

tion 6828-24a, and, being in pari materia, must be construed together. See Crawford on Statutory Construction, pages 433 and 434, which recites:

> "The rule which thus allows the court to resort to statutes in pari materia finds its justification in the assumption that statutes relating to the same subject matter were enacted in accord with the same legislative policy; that together they constitute a harmonious or uniform system of law; and that, therefore, in order to maintain this harmony, every statute treating the same subject matter should be considered. As a result, statutes in pari materia should not only be considered but also construed to be in harmony with each other in order that each may be fully effective. * * *"

With this rule as a guide, it seems that reason would dictate that such recreational activities as enumerated in Section 6828-24a, General Code, are to be considered as incidental and not dominant to the purposes of the "district".

Section 6828-74 of this act provides that it (The Conservancy Act of Ohio) should be liberally construed. This section has been interpreted by the Court of Appeals in Muskingum Watershed Conservancy District v. Seibert, 67 O. App. 413, in which case the court said at page 420:

> "* * * It is maintained that Section 74 of the act requires and prescribes that its terms be liberally construed. It is therein said, 'it shall be liberally construed to effect the control and conservation and drainage of the waters of the state.' It does not say that the acquisition of lands and easements, the matter of benefits and ascertainment of damages, and the matter of assessments shall be so construed. * * *"

It, therefore, follows that only the portions of such act as cover *"control and conservation and drainage of the waters of this State"* are entitled to a liberal construction.

Recreational facilities and the expenditure of public money for the fostering and advertising of such facilities do not fall within that portion of the act and must be construed by the well-known rules for the interpretation of statutes.

The question as asked involves the spending of public funds and on this subject the courts of Ohio have consistently held that a clear right must be shown to entitle a public board or agency to spend public funds.

In the case of State, ex rel. Locher v. Menning, et al., 95 O. S. 97, the court said at page 99:

> "* * * The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

Likewise, in the case of State, ex rel. Smith v. Maharry, 97 O. S. 272, the court held:

> "All public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. *Said trust fund can be disbursed only by clear authority of law.*"
>
> (Emphasis mine.)

In the case of the State, ex rel. Bently & Sons v. Pierce, Auditor, 96 O. S. 44, the court in considering a grant of power, said:

> "In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. * * *"

The Muskingum Watershed Conservancy District has the power not only by charging fees, but also (with the approval of the court) has two other sources of revenue with which to carry on the recreational program. Obviously, the Legislature did not intend that this activity of the Muskingum Watershed Conservancy District should rise or fall on the basis of fees collected.

Therefore, and specifically answering your question, it is my opinion that the Muskingum Watershed Conservancy District can not spend conservancy district recreational funds for advertising and the entertainment of persons invited by the district officials to inspect the works of the Muskingum Watershed Conservancy District and its recreational facilities.

Respectfully,

THOMAS J. HERBERT

Attorney General