690609.2

NATURAL RESOURCES, DEPT. OF: Authority to Grant Easements.

EASEMENTS: Department of Natural Resources has authority to grant easements over state-owned land for railroad rights of way.

No. 4645 June 9, 1969.

Dr. Ralph A. MacMullan, Director
Department of Natural Resources
Steven T. Mason Building
Lansing, Michigan 48926

You have asked this department for an opinion on the authority of the Conservation Commission, (now the Natural Resources Commission) to grant easements over state-owned lands under its jurisdiction for railroad rights of way.

You advise that for many years the department has, in reliance upon Section 3 of Act 17, P.A. 1921, as amended,[1] considered that the general land management authority conferred on it by the Legislature was sufficient to permit the department to grant easements where the proposed right of way or use appears to be in the public interest and would not be in conflict with conservation developments and uses.

You refer to Act 10, P.A. 1953, as amended, which expressly confers authority on the department to grant easements:

> "* * * Upon such terms and conditions as said Commission deems just and reasonable for the purpose of constructing, erecting, laying, maintaining and operating pipe lines, electric, telephone and telegraph lines, and facilities for the intake, transportation and discharge of water, including pipes, conduits, tubes, and structures usable in connection therewith, over, through, under and upon any and all lands belonging to the state of Michigan which are under the jurisdiction of the conservation commission or the department of conservation, and over, through, under and upon any and all of the unpatented overflowed lands, made lands and lake bottom lands belonging to or held in trust by the state of Michigan."[2]

You state that:

> "The Department has continued to grant easements for other purposes, including railroad rights of way, under the authority of Act 17, PA 1921, as amended."

You request an opinion on railroad rights of way because the validity of an easement granted by the department to Hanna Coal and Ore Corporation, being an easement and right to construct and maintain a railroad on, over and across certain state-owned land has been brought into question by a petition of Chicago and North Western Railway Company to declare the easement invalid for lack of authority. The easement was executed March 24, 1958, and because of nonuse was extended by subsequent

[1] M.C.L.A. § 299.3; M.S.A. 1969 Cum. Supp. § 13.3.
[2] Act 165, P.A. 1967, M.C.L.A. § 322.651; M.S.A. 1967 Rev. Vol. § 13.735.

agreements. The right-of-way consists of a strip of land 100 feet wide passing through each of 51 specifically described forty acre tracts located in 15 different sections in Felch and Branch Townships, Dickinson County. The grant is made subject to 12 different regulations and conditions. The consideration for the conveyance is $3,200.

It appears from the file that the reason for the easement is to enable the grantee to provide a haulage route to transport ore by rail from the Groveland Mine northeasterly to the Escanaba and Lake Superior railroad.

The specific question you ask is whether the department has authority to grant easements involving state-owned lands under its jurisdiction for railroad rights of way.

Section 3 of Act 17, P.A. 1921, as amended, does not expressly speak in terms of authority to grant easements, but provides:

> "On behalf of the people of the state the commission of conservation may accept gifts and grants of land and other property and shall have authority to buy, sell, exchange or condemn land and other property, for any of the purposes contemplated by this act."[3]

My review of various background materials, particularly the memorandum to Nicholas V. Olds, Assistant Attorney General from J. D. Stephansky dated September 12, 1968, concerning the Hanna Mining Company easement, indicates that your agency has for many years interpreted the act as allowing it to grant easements. It states in part as follows:

> "* * * this department has operated under what it considers to be a broad authority to issue easements for purposes beyond the specific purposes recited in Act 10, PA 1953, since 1921 when it was organized. The Commission minutes disclose instances where deeds were issued as far back as 1923 for railroad rights-of-way, with reversionary clauses in case of non-use, under authority of Act 17, PA 1921."

Thus it appears from the above excerpt that the Conservation Department has since 1923 interpreted Act 17, P.A. 1921, as amended, and other statutory powers, as allowing it to issue easements in instances of this kind.

An agency construction of long standing should be given great weight.[4] It should not be overruled without cogent reasons.[5] This construction is supported by opinion of the Attorney General OAG 1955-56, Vol II, p. 184, that the power to "sell, exchange or make sale of real property" did include the power to grant an easement for a road right-of-way to a county road commission.

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[3] ff 1, supra.

[4] *Wyandotte Savings Bank v. State Banking Commission,* (1956) 347 Mich. 33.

[5] *Magreta v. Ambassador Steel Company,* (1968) 380 Mich. 513.

Therefore it is my opinion that the predecessor of the Department of Natural Resources had authority to grant an easement for a railroad right-of-way to Hanna Coal and Ore Corporation.

FRANK J. KELLEY,
Attorney General.

690609.1

USURY MORTGAGES.

Loans secured by mortgages insured by the Federal Housing Administration are exempt from the provisions of the Usury Law.

No. 4668 June 9, 1969.

Representative James Del Rio
House of Representatives
Lansing, Michigan

You have requested my opinion as to whether mortgages on properties located in the State of Michigan, insured by the Federal Housing Administration, are subject to Michigan's usury statutes.

Michigan's usury statute is set forth in Act 326, P.A. 1966, as amended by Act 266, P.A. 1968, being M.C.L.A. § 438.31, M.S.A. 1969 Cum. Supp. §19.15(1) et seq. Section 1 of said act reads as follows:

> "That the interest of money shall be at the rate of $5.00 upon $100.00 for a year, and at the same rate for a greater or less sum, and for a longer or shorted time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest, not exceeding 7% per annum. This act shall not apply to the rate of interest on any note, bond or other evidence of indebtedness issued by any corporation, association or person, the issue and rate of interest of which have been expressly authorized by the Michigan public service commission or the corporation and securities bureau of the department of commerce, *or is regulated by any other law of this state, or of the United States,* nor shall it apply to any time price differential which may be charged upon sales of goods or services on credit. This act shall not be construed to repeal section 78 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.78 of the Compiled Laws of 1948." (Emphasis added.)

In *Straus v. Elless Co.* (1929) 245 Mich. 558, the Michigan Supreme Court interpreted the predecessor to the present usury statute. Plaintiffs brought a suit for the collection of monies owed on bonds secured by a mortgage bearing a rate including discounts in excess of the statutory limit with the approval of the Michigan Securities Commission. It was plaintiffs' position that because the statute specifically exempted from coverage bonds which had been expressly authorized by the Michigan Public Utilities Commission or the Michigan Securities Commission, such bonds were not open to the defense of usury. The following beginning