

separate school districts inasmuch as the restriction upon such bonding is constitutional in origin.

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ADMINISTRATIVE RULES: Adoption of Rules Regulating Use and Occupancy of Unpatented Submerged Bottomlands of the Great Lakes.

DEDICATION: Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

GREAT LAKES: Adoption of Rules Regulating Use and Occupancy of Unpatented Submerged Bottomlands of the Great Lakes.

Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

STATE PARKS: Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

NATURAL RESOURCES COMMISSION: Adoption of Rules Regulating Use and Occupancy of Unpatented Submerged Bottomlands of the Great Lakes.

Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

The Legislature has by provisions of 1899 PA 171 dedicated as a State park, all unpatented submerged bottomlands of the Great Lakes. The responsibility for control over use and occupancy of the State park is imposed upon the Commission of Natural Resources.

While the Commission is without authority to "dedicate" lands already dedicated by law, there is nothing appearing in the statutes preventing the Commission in the exercise of its duties and responsibilities from: (a) designating a particular portion of the park by distinctive name, e.g. Thunder Bay State Underwater Park; or (b) adopting administrative rules regulating use and occupancy of the area specifically designated.

Opinion No. 5078

November 10, 1976.

Dr. Howard A. Tanner, Director
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Your recent letter requests my opinion concerning the authority of the Commission of Natural Resources over the bottomlands of the Great Lakes. To quote from your letter:

"Does the Natural Resources Commission have authority to dedicate

[the bottomlands of] Thunder Bay, or any other portion of the bottomlands of the Great Lakes as a State park?

"I presume, if your answer is affirmative, the present rules for state parks and recreation areas . . . will apply, as will such other rules as the Commission may lawfully promulgate."

In response I offer the following advice.

Title to all unpatented lands, which were on the date of Michigan's admission to statehood (January 26, 1837; 55 Stat 144) submerged by waters of the Great Lakes, is vested in the State of Michigan by virtue of said admission to the Federal Union on an equal footing with its sister states. *State v Venice of America Land Co*, 160 Mich 680 (1910).

By provisions of 1899 PA 171, MCLA 317.291 *et seq.*; MSA 13.1131 *et seq.*, these lands were set apart and dedicated as a state park.

" . . . [A]ll of the swamp and submerged lands lying along the borders of Lakes Erie, Huron, Michigan, Superior and St. Clair, except such parts of the 'St. Clair Flats,' so-called, as shall have been, prior to January first, 1899, actually occupied, built up, cultivated or improved to the extent of at least 25 dollars, within the boundaries of the state of Michigan, and within the limits hereinafter described, and also all swamp or submerged lands adjoining said lakes, or in the bayous adjoining or emptying into said lands, . . ., which now belong to the state of Michigan, or to which the state of Michigan shall hereafter acquire title, shall be and hereby is set apart and dedicated for a public shooting and hunting ground, for the benefit and enjoyment of the people of the state of Michigan. This park so set aside shall extend to the state line into the respective lakes from the shore line thereof, and the outer boundary thereof shall be the center line of said lakes or the boundary of said state, and shall include all swamp or submerged lands lying between said shore line and outer boundary: Provided, That no premises herein described shall be deemed to include any islands in any of the said lakes to which the state of Michigan has no title, unless the state shall first acquire such title. . . ." 1899 PA 171 § 1, MCLA 317.291; MSA 13.1121.

Section 5 of 1899 PA 171; MCLA 317.295; MSA 13.1125 provides:

"The board of supervisors of each county shall have the care and control of that part of said park within its own boundaries and that part laying opposite and immediately adjoining in the Great Lakes. . . ."

Such responsibilities and authority appear, however, to have passed from the several boards of supervisors to State agencies under subsequent statutory enactments. 1913 PA 326, MCLA 322.401 *et seq.*; MSA 13.701 *et seq.*; 1921 PA 17, MCLA 299.1 *et seq.*; MSA 13.1 *et seq.*; 1955 PA 247, MCLA 322.701 *et seq.*; MSA 13.700(1) *et seq.*; 1965 PA 380 §§ 250-260, MCLA 16.350-16.360; MSA 3.29(250)-3.29(260).

1913 PA 326 § 1; MCLA 322.401; MSA 13.701 provides in part:

"All of the unpatented overflowed lands, made lands and lake bottom

lands belonging to the state of Michigan or held in trust by it, shall be held, leased and controlled by the state board of control. . . .”

This board was originally comprised of the Secretary of State, the Auditor General and the Commissioner of the State Land Office. After January 1, 1915:

“ . . . the powers and duties of the said state board of control . . . pass[ed] to and . . . devolved upon the public domain commission, which shall be deemed the successor in office and trust to the said state board of control. . . .” 1913 PA 326 § 1, *supra*.

The Public Domain Commission was created under provisions of 1909 PA 280 (See MCLA 322.202, *et seq.*; MSA 13.431 *et seq.*)

Pursuant to 1921 PA 17 § 2, MCLA 299.2; MSA 13.2:

“The powers and duties now vested by law in the public domain commission; . . . are hereby transferred to and vested in the conservation department.”

[The Department of Conservation was in 1965 reorganized pursuant to 1965 PA 380 §§ 250-260, MCLA 16.350-16.360; MSA 3.29(250)-3.29(260) and its name changed to the Department of Natural Resources by 1968 PA 353, being an act amendatory of 1965 PA 380 §§ 250-260, *supra*.]

Therefore the Department of Natural Resources through its commission is presently vested with all responsibilities and duties legislatively mandated by 1899 PA 171 and 1913 PA 326.

Section 11 of 1913 PA 326 prohibits the department from leasing any unpatented submerged bottomlands:

“ . . . that are now included by law of this State within a public park.”

The prohibition has continued validity, and is subject only to the exceptions set forth in the cited section (1913 PA 326, *supra*, § 11) and those provisions of 1955 PA 247, *supra*, that are irreconcilable with the prohibition.

Having been statutorily dedicated or set aside, the Commission cannot nor purport to “dedicate” the same lands. There is, however, nothing in the statutes preventing the Commission from designating a portion of the “park” by unique name, e.g. Thunder Bay State Underwater Park, and by regulation adopting specific rules relative to the use and occupancy of such bottomlands.

Such rules as have been previously adopted concerning State parks may presently be enforced when relevant to the use and occupancy of bottomlands.

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