

MOTION FILED

NOV 21 1966

No. **30**, Original

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1966

STATE OF MICHIGAN,

Plaintiff,

vs.

STATE OF OHIO,

Defendant.

**MOTION FOR LEAVE TO FILE COMPLAINT
AND COMPLAINT**

FRANK J. KELLEY

Attorney General

Robert A. Derengoski

Solicitor General

Nicholas V. Olds

Esther E. Newton

Assistant Attorneys General

No. , Original

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1966

STATE OF MICHIGAN,

Plaintiff,

vs.

STATE OF OHIO,

Defendant.

**MOTION FOR LEAVE TO FILE COMPLAINT
AND COMPLAINT**

FRANK J. KELLEY

Attorney General

Robert A. Derengoski

Solicitor General

Nicholas V. Olds

Esther E. Newton

Assistant Attorneys General

INDEX

	Page
Motion For Leave To File Complaint	1
Complaint and Exhibits	4
Certificate of Service	14

CITATIONS

Constitution of the United States, Article III, Section 2	1, 5
4 Stat 596 (Act of Congress, July 14, 1832)	5
4 Stat 628 (Act of March 2, 1833, c.54, sec. 5)	5
5 Stat 49 (Enabling Act of Congress, June 15, 1836)	2, 4, 5, 6, 9, 10, 11, 12
5 Stat 56 (Act of June 23, 1836)	2, 6, 9, 11
5 Stat 144 (Act of January 26, 1837)	2, 6
Executive Document 54, 24 Cong., 1st Sess	5, 8
28 U.S.C. 1251	5
Michigan Geol. Series 18—Michigan Geol. and Biol. Survey	7
H.R. No. 383	10
H. Rep. No. 380, 24 Cong., 1st Session	10
Mich. Concurrent Resolution No. 260	12

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1966

No., Original

STATE OF MICHIGAN,

Plaintiff,

vs.

STATE OF OHIO,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

TO THE HONORABLE

THE SUPREME COURT OF THE UNITED STATES

The State of Michigan by Frank J. Kelley, its Attorney General, asks leave of the Court to file its complaint against the State of Ohio and submits in support thereof the following:

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of Michigan against the State of Ohio to be instituted in this Court under authority of Article III, Section 2 of the Constitution of the United States.

The purpose of the proposed action is to determine the boundary, to settle and adjudicate an existing boundary dis-

pute, and to confirm the jurisdiction and sovereignty of the State of Michigan over territory described in the complaint.

The State of Michigan claims that the territory in controversy became a part of the State of Michigan by virtue of the act of admission of the State of Michigan into the Union of January 26, 1837, 5 Stat 144, and by virtue of the real intent of the Congress of the United States in establishing the northern boundary of the State of Ohio and the southern boundary of the State of Michigan pursuant to the Enabling Act of Congress of June 15, 1836, 5 Stat 49, and Act of June 23, 1836, 5 Stat 56, 57, to settle and establish the northern boundary line of the State of Ohio.

For many years before and after the admission of Michigan into the Union there existed uncertainty with respect to the true location of the land boundary between Michigan and Ohio. During the years 1914-1917 the States of Michigan and Ohio, through legislative enactments and reciprocal action, determined, located and monumented the land boundary between Michigan and Ohio from the northwest corner of Ohio to its then eastern land terminus at post 71 located a little more than 900 feet west of the shore of Maumee Bay on swampy land, the northernmost cape of Maumee Bay then having been washed away, as is more particularly set forth in the complaint.

Although the states of Michigan and Ohio did establish, locate and monument their land boundary, nevertheless, there has never been a binding official determination made of the true location of the most northerly cape of the Maumee (Miami Bay) referred to and specified in the Enabling Act of June 15, 1836 and the aforesaid Act of June 23, 1836; and also there has never been any official determination made and fixing of the boundary between these states extending from the aforesaid point through

Lake Erie to the international boundary line. Although during the years there have been attempts and efforts made at resolving the location of this line, the states have been unable through any official action to arrive at any binding agreement, understanding or compact with respect thereto, as is more fully set forth in the complaint.

It is a matter of common concern and importance to the states and to the general public using the waters of Lake Erie that this boundary be ascertained, fixed and determined by judicial action of this Court under the powers vested in it in the Constitution of the United States and the applicable laws thereof.

The State of Michigan recently through a joint legislative committee and its attorney general offered to the Governor of Ohio to settle this dispute by mediation and negotiation by means of a joint boundary commission, but said offer on the part of the State of Michigan was rejected by the Governor of Ohio, as is more fully explained in the complaint.

For the foregoing reasons it is respectfully prayed that the Court grant leave to the State of Michigan to file its complaint against the State of Ohio.

FRANK J. KELLEY

Attorney General

Robert A. Derengoski

Solicitor General

Nicholas V. Olds

Esther E. Newton

Assistant Attorneys General

Attorneys for the Plaintiff,

State of Michigan

The Capitol

Lansing, Michigan

~~October 31, 1966.~~

November 21, 1966

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1966

No., Original

STATE OF MICHIGAN,

Plaintiff,

vs.

STATE OF OHIO,

Defendant.

COMPLAINT

The State of Michigan, by its Attorney General, Frank J. Kelley, brings this suit in equity against the State of Ohio in an original action for the purpose of settling a boundary dispute existing between them.

I

This complaint is filed for the following purposes:

1. To judicially determine the location of the "most northerly cape of the Maumee (Miami) bay" declared and established in the Enabling Act of Congress of June 15, 1836, c 99, 5 Stat 49.

2. To construe the line "from the said north cape of the said bay, northeast to the boundary line between the United States and the province of Upper Canada, in Lake Erie"

in accordance with the real intent of the Congress in enacting the Enabling Act of June 15, 1836 to be an extension of "a direct line drawn from the southern extremity of Lake Michigan, to the most northerly cape of the Maumee (Miami) bay," i.e., a line following the arc of the great circle drawn from the south bend of Lake Michigan to the north cape of the Maumee bay as found and computed by A. Talcott, Capt. Engineers, pursuant to Act of Congress of July 14, 1832, 4 Stat 596, and Act of March 2, 1833, c 54, sec. 5, 4 Stat 628, and reported to the Congress in Executive Document 54, 24 Congress, 1st Session.

3. To declare and confirm the jurisdiction and sovereignty of the State of Michigan in all that part and area of Lake Erie lying northerly of the boundary line described in subparagraph (2) hereof and to declare and confirm the ownership in the State of Michigan of the bottom lands, including all minerals and other natural resources appertaining thereto, of Lake Erie lying northerly of said boundary line.

II

The jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. 1251.

III

The Act providing for the admission of Michigan into the Union made the admission conditional on the acceptance by Michigan of the provisions thereof in regard to the boundaries therein described, including the boundaries between Michigan and Ohio, and the assent of the State of

Michigan thereto was given in accordance with the requirements of said Act of Congress, by resolution of a convention held for that purpose on the 15th day of December, 1836, so that, upon the passage of the Act of January 26, 1837, 5 Stat 144, Michigan became possessed of full statehood and of complete sovereignty over the territory within her boundaries as therein described. The common boundary between Michigan and Ohio is described in the Act of June 15, 1836, 5 Stat 49, which provides :

“That the northern boundary line of the State of Ohio shall be established at, and shall be a direct line drawn from the southern extremity of Lake Michigan, to the most northerly cape of the Maumee (Miami) bay, after that line, so drawn, shall intersect the eastern boundary line of the State of Indiana; and from the said north cape of the said bay, northeast to the boundary line between the United States and the province of Upper Canada, in Lake Erie; and thence, with the said last mentioned line, to its intersection with the western line of the State of Pennsylvania.”

The northern boundary of Ohio is also described in the Act of June 23, 1836, 5 Stat 56, 57, “an Act to settle and establish the northern boundary line of the State of Ohio,” as follows :

“That the northern boundary of the State of Ohio shall be established by, and extend to, a direct line running from the southern extremity of Lake Michigan to the most northerly cape of the Miami bay; thence, northeast, to the northern boundary line of the United States; thence, with said line, to the Pennsylvania line.”

IV

Because the true location of the land boundary between

Michigan and Ohio was for many years in a state of uncertainty, between the years 1914-1917, the states of Michigan and Ohio, through legislative enactments and reciprocal action of their officials, caused said land boundary to be surveyed and monumented. A report of said joint surveying and monumenting of the land boundary line is contained in the "Biennial Report of the Director 1914-1916 and Report on Retracement and Permanent Monumenting of the Michigan-Ohio Boundary," 1916 Pub. 22, Michigan Geol. Series 18, Mich. Geol. and Biol. Survey.

This joint survey extended from the northwest corner of Ohio to its then eastern land terminus at post 71, as is shown on page 82 of said report, located approximately 900 feet west of the shore along the bay on swampy land; according to map No. 9 of this document, a projected line extending from post 71 easterly states it is:

"Toward original position of northernmost cape of Maumee Bay—Original monument and cape washed away."

Although during the years there have been attempts and efforts made at resolving the location of the boundary line between these states across Lake Erie, no binding agreement, understanding or compact has been arrived at by any official action.

V

1. In order to display graphically the boundary line now in dispute from the most northerly cape of Maumee Bay across Lake Erie to the international boundary line, there is attached a reproduction of the General Map which accom-

panied Captain Talcott's report of December 14, 1835, Executive Doc. 54, 24th Congress, 1st Sess., upon which plaintiff has drawn a projected extension of the line which joins the south bend of Lake Michigan with the north cape of the Maumee Bay as computed by A. Talcott.

Also on said map plaintiff has drawn a projected line across Lake Erie connecting the assumed position of north cape of Maumee Bay with a point on the international boundary line that became turning point 160 of said international boundary line. This line was shown on a base map printed by the United States Department of Interior, Geological Survey, compiled in 1910 and 1911, and is shown as having a bearing of approximately N 63° 45' E. In a letter dated September, 1930 from the United States Department of Interior, Geological Survey, to L. R. Schoenmann, Land Economic Survey, Michigan Department of Conservation, Lansing, Michigan, it is stated:

“The map of Ohio which accompanies Prof. C. E. Sherman's Final Report of Ohio Cooperative Topographic Surveys 1922 shows the boundary between Ohio and Michigan in Maumee Bay as an extension of the eastern end of the line, as established in 1915, to an assumed position of North Cape: thence through Lake Erie in a direct line to Turning Point 160 of the International Boundary as established by the International Waterways Commission upon the International Boundary between the Dominion of Canada and the United States through the St. Lawrence and Great Lakes. The position of the point is latitude 41° 51' 48.582" longitude 83° 04' 08.931".”

This line was questioned by Professor C. E. Sherman, Inspector, in his final report, dated 1933, of the Ohio Co-

operative Topographic Survey. All of the foregoing is indicative of the uncertainty of the true course of the boundary line across Lake Erie to the international boundary line.

2. Contrary to the real and true intent of Congress in the passage and enactment of the Enabling Act of June 15, 1836 and the said Act of June 23, 1836, based upon the aforesaid report of A. Talcott transmitted by the President to the Congress, the State of Ohio erroneously claims that the projected line to be drawn across Lake Erie from the north cape of Maumee Bay to the international boundary line should be drawn on a bearing of N 45° E, and there is drawn on the map attached to this complaint a projected line as claimed at the present time by the State of Ohio.

The triangular area of Lake Erie encompassed by the projected line drawn across Lake Erie as claimed by Michigan and the projected N 45° E line as presently claimed by Ohio encompasses approximately 200 square miles of Lake Erie waters and bottom lands. This triangular area in dispute contains many valuable natural resources such as fisheries, bottom lands, minerals in the form of gas and oil, all of which are under the direct sovereign and proprietary control of the state legally entitled to them.

The disputed area has been and will continue to be a source of controversy over which state's laws should be applied and on numerous occasions the State of Ohio has unlawfully arrested Michigan fishermen in said disputed area.

3. Plaintiff, on information and belief, states that the State of Ohio has assumed to take over jurisdiction, control and ownership of the area of Lake Erie herein described and by administrative process has subdivided the area for

the purpose of issuing leases for the exploration and discovery of gas and oil, all of which is contrary to the just legal rights of the State of Michigan.

VI

The long standing controversy over the northern boundary of Ohio and the admission of Michigan into the Union culminated in the passage of the said Enabling Act of June 15, 1836 by the 24th Congress, 1st Session. The Committee on the Judiciary of the House reported to the Congress H.R. No. 383, a copy of which is attached. After extensive hearings the Committee filed its report dated March 2, 1836, H. Rep. No. 380, 24th Congress, 1st Session.

During the course of its investigation this Committee had for its use and consideration all pertinent documents transmitted by the President relating to the northern boundary of the State of Ohio and on page 18 of its report stated:

“That it is expedient to establish the north boundary of Ohio, by a direct line drawn from the southern extreme of Lake Michigan, after intersecting the eastern boundary of Indiana, to the most northerly cape of the Maumee bay; thence, direct to the territorial line in Lake Erie, and by the said territorial line to the Pennsylvania line:

“That the period has arrived, when Congress ought to exert, in part, a contingent power conferred by the ordinance, and to form a State north of this east line, of dimensions, and capacity to accommodate a population as nearly equal to the territory which may hereafter be formed into another State, as circumstances will

permit: the committee have the honor to report a bill enforcing these opinions''

Thus, it is clear that the real and true intent of the Congress, as evidenced by the contents of this voluminous report, was that the northern boundary of Ohio in connection with the question of admission of Michigan into the Union was to be projected across Lake Erie "direct to the territorial line in Lake Erie" on the course of "a direct line drawn from the southern extreme of Lake Michigan * * * to the most northerly cape of the Maumee."

The State of Michigan claims that if the real and true intent of the Congress were to be given effect in construing the language of the said Act of June 15, 1836 setting forth the conditions under which Michigan was to be admitted into the Union and the Act of June 23, 1836 establishing the northern boundary of the State of Ohio, this line would be a *direct* extension of Talcott's line across Lake Erie instead of a *broken* line as claimed by the State of Ohio.

VII

The State of Michigan has attempted at various times to make a settlement of its boundary dispute with Ohio. On January 10, 1966 Frank J. Kelley, Attorney General of the State of Michigan, transmitted to the Honorable James Rhodes, Governor of the State of Ohio, a letter, copy of which is attached, proposing "that a joint boundary commission be authorized and empowered to hear all of the facts and make recommendations to the respective States" as a means of arriving at an amicable solution of the existing dispute. However, this offer on the part of the State of Michigan was rejected by the Governor of the State of Ohio in a letter dated January 14, 1966 addressed to the Honor-

able Frank J. Kelley, Attorney General of the State of Michigan, copy of which is attached.

The Michigan Legislature taking cognizance of this situation adopted House Concurrent Resolution No. 260, copy of which is attached, being adopted by the House on April 6, 1966 and by the Senate on April 7, 1966. Among other things it requested the Attorney General of the State of Michigan to “take such legal action and to file and prosecute such legal proceedings as may be necessary in the Supreme Court of the United States or any other court of competent jurisdiction for the purpose of securing a final and judicial determination of the location of said boundary.”

VIII

Wherefore, the State of Michigan prays this Honorable Court to grant the following relief:

1. Declare and determine that the boundary line in Lake Erie between the State of Michigan and the State of Ohio from Post No. 71 consists of a direct line projected across Lake Erie to the international boundary line as being an extension of a direct line drawn from the southern extreme of Lake Michigan to the most northerly cape of Maumee in the manner and form more fully stated in this complaint.
2. Judicially determine the location of the most northerly cape of Maumee (Miami) bay as the same was defined and described in the Enabling Act of Congress of June 15, 1836, said cape being the point of beginning of the boundary line to be projected across Lake Erie to the international boundary as hereinbefore described.
3. Declare and confirm the jurisdiction and sovereignty

of the State of Michigan in all that part and area of Lake Erie lying northerly of the boundary line hereinbefore described and declare and confirm the ownership in the State of Michigan of the bottom lands, including all minerals and other natural resources appertaining thereto, of Lake Erie lying northerly of said boundary line.

4. Since the foregoing requires the ascertainment of facts and involves disputed questions of law, appoint a special master with full power to hear the issues of fact and law and file his recommendations.

5. Grant such other and further relief as this Court may deem proper and necessary.

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Nicholas V. Olds
Esther E. Newton
Assistant Attorneys General

CERTIFICATE OF SERVICE

The undersigned, a member of the bar of the Supreme Court of the United States, and one of the counsel of record for the plaintiff, hereby certifies:

That on the ^{21st} ^{November} ~~31st~~ day of ~~October~~, 1966, he served the within and foregoing "Motion for Leave to File Complaint and Complaint" upon the sovereign State of Ohio, the defendant in said action, in the following manner, as prescribed by Rules 9 and 33 of said Court:

He deposited at the post office at Lansing, Ingham County, Michigan, two copies each of the within and foregoing Motion and Complaint, securely enclosed in an envelope, air mail postage duly prepaid, addressed to each of the following officials of said defendant State respectively, at his post office address, as stated below, that is to say:

Honorable James A. Rhodes
Governor of the State of Ohio
Columbus, Ohio

Honorable William B. Saxbe
Attorney General of the State of Ohio
Columbus, Ohio

Robert A. Derengoski

MAP,

That portion of country situated between the South Bend of Lake Michigan and Lake Erie, excepting the Maumee Bay & River, is compiled from the latest Authorities. The latitudes of the several points established, are as follows:—

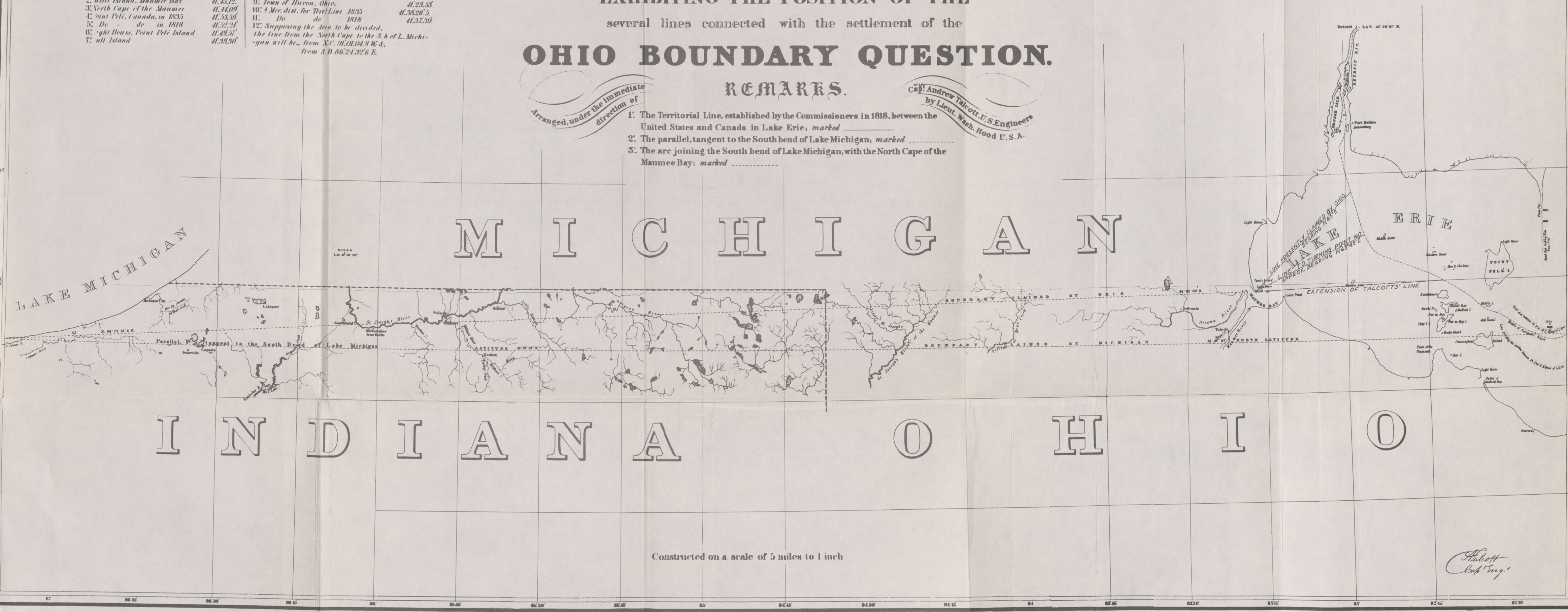
1. South Bend of Lake Michigan Lat. $41.37.07''$ N	8. South Bend of Lake Erie, east of Huron $41.22.54''$
2. Little Island, Maumee Bay $41.43.12''$	9. Town of Huron, Ohio $41.23.53''$
3. North Cape of the Maumee $41.44.09''$	10. $\frac{1}{2}$ Mer. dist. for Terr. Line 1835 $41.38.26.5''$
4. Point Pelé, Canada, in 1835 $41.53.39''$	11. Do do 1818 $41.37.39''$
5. Do do in 1818 $41.52.24''$	12. Supposing the Area to be divided, the line from the North Cape to the S. h. of L. Michigan will be, from N.C. $91.01.04.8''$ W. & from S.B. $86.24.32.6''$ E.
6. Light House, Point Pelé Island $41.49.57''$	
7. All Island $41.39.30''$	

EXHIBITING THE POSITION OF THE several lines connected with the settlement of the OHIO BOUNDARY QUESTION. REMARKS.

Arranged, under the immediate direction of

by Capt. Andrew Talcott, U.S. Engineers
by Lieut. Wash. Hood U.S.A.

1. The Territorial Line, established by the Commissioners in 1818, between the United States and Canada in Lake Erie, marked -----
2. The parallel, tangent to the South bend of Lake Michigan, marked -----
3. The arc joining the South bend of Lake Michigan, with the North Cape of the Maumee Bay, marked -----



A. Talcott
Capt. Eng.

A BILL

To establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the northern boundary line of the State of Ohio shall be established by a direct line drawn from the southern extremity of Lake Michigan to the most northerly cape of the Maumee (Miami) bay, after intersecting the eastern boundary line of the State of Indiana; thence northeast to the boundary line between the United States and Canada, in Lake Erie; thence with said line to the Pennsylvania line.

SEC. 2. *And be it further enacted,* That the constitution and State Government, which the people of Michigan have formed for themselves, be, and the same is hereby, accepted, ratified, and confirmed: *Provided, however,* That the said State shall consist of, and have jurisdiction over, all the territory included within the following boundaries, and over none other, to wit: beginning at the point where the above named north boundary of Ohio intersects the eastern boundary of Indiana, and running thence with the said boundary line, as above specified, to the territorial line in Lake Erie; thence with the said territorial line through Detroit river, Lake Huron, and Lake Superior, to a point where the said territorial line last touches Lake Superior; thence in a direct line through Lake Superior to the mouth of the Montreal river; thence through the middle of the main channel of Montreal river to the middle of the Lake of the Desert; thence in a direct line to the nearest head water of the Menominee river; thence through the middle of that fork of the said river first touched by said line to the main channel of the said Menominee river, and through the middle of the same to the middle of Green bay; thence through the middle of the main channel of Green bay to the middle of Lake Michigan; thence through the middle of Lake Michigan to the northern boundary line of Indiana, as established by the act of the 19th of April, 1816; thence due east with the said north boundary line to the northwest corner of said State; thence south with the east boundary line of Indiana to the place of beginning.

SEC. 3. *And be it further enacted,* That the State of Michigan shall be admitted into this Union, on an equal footing with the original States, in all respects whatever, upon these fundamental conditions: that the boundary of the said State shall be the lines and limits above established, and that these boundaries shall receive the assent and approbation of the Senators and Representative elected to Congress, and the Legislature of the said State, acting respectively under the authority of the ordinance of the convention which formed the constitution of said State; and as soon as said assent and approval shall have been made, and given, the President of the United States shall be authorized to announce the same, by proclamation; and thereupon, and without any further proceeding on the part of Congress, the admission of the said State into the Union shall be considered as complete, and the Senators and Representative who have been elected by the said State shall be entitled to take their seats in the Senate and House of Representatives, respectively, without further delay.

STATE OF MICHIGAN
OFFICE OF THE
ATTORNEY GENERAL
LANSING, MICHIGAN

January 10, 1966

The Honorable James Rhodes
Governor of the State of Ohio
The Capitol
Columbus, Ohio

Re: Michigan-Ohio Boundary in Lake Erie

My dear Governor Rhodes:

Although various attempts have been made during the past several decades to determine and settle the boundary between Michigan and Ohio from the land boundary across Lake Erie to the International Boundary Line, so far none of these efforts have proved successful. Consequently, uncertainty still exists as to where the boundary actually is or should be, resulting in confusion regarding the enforcement of our laws, as well as with respect to the ownership of the bottom land of Lake Erie and its minerals.

The Michigan Legislature has formed a special joint Senate-House committee, Representative Raymond C. Ketrus of Monroe serving as chairman, for the purpose of investigating this problem and determining what should be done by both the legislative and executive branches of government to achieve an amicable solution with Ohio. I might say, parenthetically, the same situation exists concerning the boundary in Lake Michigan between Michigan and Indiana and also between Michigan and Illinois.

I have discussed this informally with Attorney General William Saxbe, but since this question would affect the State of Ohio at its broadest level, I am addressing this communication to you and invite you to give consideration to the following plan. The joint Senate-House committee and I have in mind a conference to be arranged between representatives of the executive and legislative branches of our two states to be held in Columbus to explore and discuss this situation with the hope and expectation that a joint

C
O
P
Y

The Honorable James Rhodes
Page 2
January 10, 1966

boundary commission be authorized and empowered to hear all of the facts and make recommendations to the respective states. If this course were agreed upon the legislature of our State meeting this year, could pass the legislation necessary to organize our section of the boundary commission. Of course, we would await the meeting of the Ohio Legislature in 1967 to pass similar legislation.

Will you please give this proposal your earnest consideration and advise me as soon as possible as to whether you are in agreement, and if not, what alternative proposal you may want to make.

Respectfully yours,

FRANK J. KELLEY
Attorney General

cc: Rep. Raymond Kehres
Mr. James Hanson - (Sent 1-19-66)

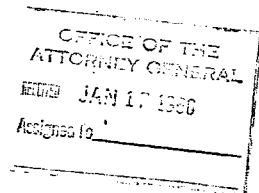
C
O
P
Y



JAMES A. RHODES
GOVERNOR

STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43215

January 14, 1966



The Honorable Frank J. Kelley
Attorney General
State of Michigan
Lansing, Michigan 48902

Dear Mr. Kelley:

It is fortunate indeed that the question with respect to the Ohio-Michigan boundary does not urgently demand solution as the legislative bodies of our two states are not synchronized. Apparently the Michigan Legislature is in session or has recently been in session. The Ohio General Assembly adjourned sine die some months ago and will not again be in session until January 1967. When it convenes its 107th session, it is likely to be a much different body from the present one as its members will be elected under a new "one man-one vote" apportionment.

It would seem to me that prompt action could be taken to define the boundary wherever it might be in question if Michigan would simply petition the United States Supreme Court for a declaratory judgment on the matter. I understand that the Supreme Court has original jurisdiction in any disputes between states and if it took jurisdiction of the case would be able to name a Special Master to hear evidence.

Sincerely,

JAMES A. RHODES
Governor

JAR:mh

cc: The Honorable William B. Saxbe
Attorney General of Ohio

RECEIVED

FEB 15 1966

LEGAL DIVISION
DEPT. OF CONSERVATION

STATE OF MICHIGAN



MICHIGAN LEGISLATURE

House Concurrent Resolution No. 260

Offered by Representatives Kahres, Beeson and Farnsworth

A CONCURRENT RESOLUTION REQUESTING THE ATTORNEY GENERAL TO FILE AND PROSECUTE PROCEEDINGS IN THE UNITED STATES SUPREME COURT FOR THE DETERMINATION OF THE BOUNDARY BETWEEN THE STATE OF MICHIGAN AND STATE OF OHIO ACROSS LAKE ERIE FROM POST NO. 71 OF THE ESTABLISHED AND DETERMINED LAND BOUNDARY BETWEEN MICHIGAN AND OHIO TO THE INTERNATIONAL BOUNDARY LINE.

WHEREAS, The Legislature of the State of Michigan has been concerned with the problem of determining and establishing the boundary line between the State of Michigan and the State of Ohio across Lake Erie particularly from post No. 71 of the land boundary to the International Boundary Line; and

WHEREAS, A Joint Committee of the House of Representatives and Senate under the chairmanship of Representative Raymond C. Kahres has made an investigation of this problem jointly with Attorney General Frank J. Kelley; and

WHEREAS, From said investigation it appears that the boundary between the State of Michigan and the State of Ohio across Lake Erie particularly from post No. 71 of the land boundary line to the International Boundary Line has never been officially legally determined and established; and

WHEREAS, Efforts on the part of the Joint Legislative Committee and the Attorney General of the State of Michigan to have said boundary determined and established by a Joint Boundary Commission composed of representatives of both States has been rejected by the Governor of Ohio pursuant to his letter dated January 14, 1966, addressed to Attorney General Frank J. Kelley of the State of Michigan reading as follows:

"It is fortunate indeed that the question with respect to the Ohio-Michigan boundary does not urgently demand solution as the legislative bodies of our two states are not synchronized. Apparently the Michigan Legislature is in session or has recently been in session. The Ohio General Assembly adjourned sine die some months ago and will not again be in session until January, 1967. When it convenes its 107th session, it is likely to be a much different body from the present one as its members will be elected under a new 'one man-one vote' apportionment.

"It would seem to me that prompt action could be taken to define the boundary wherever it might be in question if Michigan would simply petition the United States Supreme Court for a declaratory judgment on the matter. I understand that the Supreme Court has original jurisdiction in any disputes between states and if it took jurisdiction of the case would be able to name a Special Master to hear evidence"; and

WHEREAS, The determination and establishment of this boundary is essential with respect to the enforcement of the laws of each state and in the determination of the ownership of the bottom lands of Lake Erie between these states; now therefore be it

RESOLVED BY THE HOUSE OF REPRESENTATIVES (the Senate concurring), That the Attorney General of the State of Michigan be requested to take such legal action and to file and prosecute such legal proceedings as may be necessary in the Supreme Court of the United States or any other court of competent jurisdiction for the purpose of securing a final and judicial determination of the location of said boundary; and be it further

RESOLVED, That should the Attorney General incur special or extraordinary expenses with regard to the prosecution of such proceedings that the Legislature would give favorable consideration to any special budgetary item needed to defray said expenses; and be it further

RESOLVED, That all departments and agencies of the state government cooperate with the Attorney General and make available to him any information, data, documents and services which he may need in the prosecution of such proceedings; and be it further

RESOLVED, That a copy of this concurrent resolution be transmitted to the Attorney General of the State of Michigan, Frank J. Kelley.

Adopted by the House April 6, 1968.

Adopted by the Senate April 7, 1968.

Ernest B. Farnsworth
Secretary of the Senate.

T. Howard Thatcher
Clerk of the House of Representatives.

