

3607

1. PIGEONS, HOMING—KEPT FOR SOLE PURPOSE OF RACING—NOT “DOMESTIC FOWLS OR POULTRY”— COUNTY COMMISSIONERS NOT AUTHORIZED BY LAW TO PAY DAMAGE CLAIMS FOR PIGEONS KILLED OR INJURED BY DOGS—SECTION 955.29 RC.
2. SECTION 519.21 RC FORBIDS ZONING OF ANY LAND IN A TOWNSHIP SO AS TO PROHIBIT USE FOR AGRICULTURAL PURPOSES—SECTION DOES NOT PREVENT ADOPTION OF ZONING REGULATIONS TO LIMIT USE OF LAND TO RAISE MINKS.

SYLLABUS:

1. Homing pigeons propagated and kept for the sole purpose of racing, are not “domestic fowls or poultry”, within the purview of Section 955.29, Revised Code, relating to payment of damages to the owner of certain livestock and domestic fowls or poultry which are killed or injured by dogs, and the county commissioners are not authorized by law to pay damage claims for the killing or injuring of such pigeons.

2. The provision of Section 519.21, Revised Code, forbidding the zoning of any land in a township, so as to prohibit its use for agricultural purposes, does not prevent the adoption of zoning regulations limiting the use of such land for raising minks.

Columbus, Ohio, March 17, 1954

Hon. Paul J. Mikus, Prosecuting Attorney
Lorain County, Elyria, Ohio

Dear Sir:

I have before me your communication, in which you ask my opinion (1) as to the applicability of Section 955.29, Revised Code, to a claim for damages caused by dogs, to homing or racing pigeons; (2) whether the raising of minks comes under the definition of “animal husbandry” as that term is used in Sections 519.01 and 519.21, Revised Code.

1. Section 955.29, Revised Code, to which you have referred, reads in part, as follows:

“Any owner of horses, sheep, cattle, swine, mules, goats, and domestic fowls or poultry, having an aggregate value of ten

dollars or more which have been injured or killed by a dog not belonging to such owner or harbored on his premises, in order to be entitled to enter a claim for damages must notify a member of the board of county commissioners or dog warden * * *

I think it worth while to trace the history of this section, as having a bearing on the entire purpose of the General Assembly, as expressed in its legislation throughout many years. The earliest act which I have found was enacted in 1877, 74 O. L., 177, entitled, "An Act for the protection of wool growers, and the confiscation of dogs." This section protected only owners of sheep that were killed or injured by dogs. Through a large number of amendments, this statute continued to apply only to sheep, until 1917, when it was amended, 107 O. L., 534, to cover "any owner of horses, sheep, cattle, swine, mules and goats." In 1943, 120 O. L., 471, the statute was again amended so as to include "any owner of horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having an aggregate value of \$10.00 or more."

It will be observed that the language of the opening sentence of the present law is precisely like that adopted in 1943, except that commas have been placed after the words "goats" and "poultry."

It appears to me therefore, quite clear that the law has been intended from the beginning to protect the owners of livestock and other domestic animals, including at present, "domestic fowls and poultry," and that the purpose of the act was to protect them against injury to those animals which are ordinarily reared either for food, or for some valuable by-product, such as wool or feathers, or for assistance in producing it, such as horses and mules.

From the punctuation of the language used in this section and in its previous form in the General Code, it appears that the words, "domestic fowls or poultry" were intended not to describe two classes of fowls but were used merely as words descriptive of the same class. It will be observed that there are commas after each of the classes named, ending with the word "goats," and then follows the language "*and* domestic fowls or poultry." If domestic fowls and poultry constituted two separate classes, the word "and" would have been omitted. Furthermore the use of "or" separating "domestic fowls" and "poultry" as contrasted with the word "and" after "goats" lends further color to the conclusion which I have indicated. I am firm in my conviction that domestic fowls and poultry are one and the same, so far as this law is concerned.

In the various definitions which I have been able to find, of the word "poultry", emphasis is placed on the fact that the word includes only such fowls or other birds as are propagated and kept for the sake of their flesh and eggs, in other words, for their food value. Typical of these definitions I find the following in the Encyclopaedia Britannica:

"The term 'poultry' is usually regarded as inclusive not only of fowls but other domesticated birds kept for the sake of their flesh or eggs. They may be classified into the following main categories: (1) Fowls for egg production; (2) Fowls for meat production; (3) Ducks for egg and meat production (4) Geese for meat production only (5) Turkeys for meat production and (6) Guinea fowls for meat production."

The same authority further makes this comment:

"The term 'poultry' includes fowls, ducks, (domestic) turkeys, guinea fowl and geese; the word game is usually applied to wild duck, partridges; grouse, pheasants, quails, deer (venison) and other edible wild birds and beasts. Rabbits, hare and *pigeons* are usually classed with game." (Emphasis added.)

Opinion No. 5841, Opinions of the Attorney General for 1936, quotes Webster's Twentieth Century Dictionary as defining the term "poultry", as follows:

"*Domestic fowls* which are propagated and fattened for the table, such as chickens, turkeys, guinea fowls and geese." (Emphasis added.)

I find precisely the same definition in the 1940 edition of Webster's Unabridged Dictionary. It will be noted that in these definitions, pigeons are not included as domestic fowls. It may be admitted, of course, that pigeons can be domesticated, and could be eaten, as well as could many other birds which admittedly do not belong to the general class of domestic fowls or poultry. It is also admitted that almost any wild bird can be domesticated, but the statute does not speak of "domesticated fowls" but rather of "domestic fowls", meaning, as I see it, the *class of fowls* which normally make their home on a farm, and, as indicated by the above definitions are propagated and fattened for the table and for their eggs, feathers, etc. In the case of *Bartels v. State*, 91 Neb., 575, it is said:

"'Poultry'—defined as domestic fowls raised for the table or for their eggs or feathers, including pigeons, *if reared for the table.*" (Emphasis added.)

It will thus be seen that it would require a strained construction to bring pigeons within the scope of "domestic fowls and poultry." Certainly, the only condition under which they may be considered as so included is when they are propagated and fattened for the table. It does not appear to me that when they are bred and kept purely for sporting or racing purposes, they could in any sense be regarded as domestic fowls, any more than the trained falcons, which some sportsmen raise and train for hunting purposes, or other birds which are caged and kept for exhibition.

It is accordingly my opinion that homing pigeons propagated and kept for the sole purpose of racing, are not "domestic fowls or poultry", within the purview of Section 955.29, Revised Code, relating to payment of damages to the owner of certain livestock and domestic fowls or poultry which are killed or injured by dogs, and that the county commissioners are not authorized by law to pay damage claims for the killing or injuring of such pigeons.

2. Your second question reads as follows :

"Will you also advise whether or not the raising of minks comes under the definition of animal husbandry as provided in General Code Section 3180-45 and Revised Code Sections 519.01 and 519.21."

Section 519.01, Revised Code, reads as follows :

"As used in sections 519.02 to 519.25, inclusive, of the Revised Code, 'agriculture' includes agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry."

Section 519.21, Revised Code, reads in part :

"Sections 519.02 to 519.25, inclusive, of the Revised Code confer no power on any board of township trustees or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, and no zoning certificate shall be required for any such building or structure."

I assume that you intend to raise the question whether "animal husbandry" includes the raising of minks, so as to prevent the township trustees in adopting zoning regulations, or a zoning board of appeals in approv-

ing them, from prohibiting the use of any of the land in the zoned area for raising minks.

I find the following definition of "husbandry" in the 1940 Edition of Webster's Dictionary:

"The business of a farmer; agriculture."

Black's Law Dictionary defines it as follows:

"Agriculture; cultivation of the soil for food; farming, in the sense of operating land to raise provisions."

I have found no definition of "animal husbandry." But since lexicographers seem to agree that "husbandry" and "agriculture" are synonymous, it seems to me that "animal husbandry" must be confined to such animals as are usually incidental to the operation of a farm, and generally, would include the same classes of animals as are protected by the provisions of the statutes discussed in the first branch of this opinion.

The provisions of the statutes above quoted, bearing on township zoning, were in my opinion clearly designed for the sole purpose of protecting farmers in the conduct of their regular and normal operations.

A man might establish a place for the breeding and rearing of any kind of non-domestic animals, ranging from elephants to mice. I do not believe that such occupation would ever be characterized as agriculture. Minks and their fur, wrought into certain garments, may play an important part in the economic and political life of the nation, but they certainly have nothing to do with "farming" or "agriculture."

It is therefore my opinion that the provision of Section 519.21, Revised Code, forbidding the zoning of any land in a township, so as to prohibit its use for agricultural purposes, does not prevent the adoption of zoning regulations limiting the use of such land for raising minks.

Respectfully,
C. WILLIAM O'NEILL
Attorney General