

to encumber the property after the conveyance of such property "in trust" to the Division of Aid for the Aged. The Division of Aid for the Aged, like other state boards and public officers, has those powers, and those only expressly given to it by statute or those necessarily implied from such express statutory powers. *State ex rel. vs. Commissioners*, 6 N. P. (N. S.) 281, 20 O. D. (N. P.) 879; affirmed *Ireton vs. State ex rel.*, 12 C. C. (N. S.) 202; 21 O. C. D. 212; 412, affirmed without opinion in *Ireton vs. State*, 81 O. S. 562; *State ex rel. vs. Kraft*, 19 O. A. R. 454, 456; *Peter vs. Parkinson, Treas.* 83 O. S. 36, 49; *Jones, Auditor, vs. Commissioners of Lucas County*, 53 O. S. 189; *Elder vs. Smith, Auditor et al.*, 103 O. S. 369, 370; *State ex rel. Copeland vs. State Medical Board*, 103 O. S. 369, 370; *Civil Service Commission vs. State, ex rel.*, 127 O. S. 261.

Consequently in view of this well established rule of public law it is my opinion that the Division of Aid for the Aged is not authorized to execute a waiver of priority in favor of a prospective subsequent mortgagee who wishes to encumber the property transferred to the Division of Aid for the Aged "in trust" after such transfer to such Division has been made.

Another method of accomplishing the same result as a waiver of the lien would be the reconveyance of the property to the pensioner, then the placing of the subsequent mortgage lien on the realty and then a subsequent conveyance by the recipient of the Old Age Pension to the Division of Aid for the Aged. However, it should be noted that by virtue of Section 1359-6, General Code, quoted in part supra, that after a transfer of the realty has been made to the Division of Aid for the Aged that a reconveyance to the recipient of the Old Age Pension may only be made "when the Division of Aid for the Aged is reimbursed to the full amount of aid paid and interest." By reason of the rule of construction "expressio unium exclusio alterius est" it would appear that such reconveyance to the pensioner in order to accomplish the purpose desired by the prospective subsequent mortgagee in the case outlined in your inquiry would not be authorized.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4281.

CONSERVATION—MONIES DERIVED FROM SALE OF HUNTING AND FISHING LICENSES MAY NOT BE USED FOR PUBLICATION OF MAGAZINE ON CONSERVATION.

SYLLABUS:

The Conservation Council is not authorized to expend monies derived from the sale of fishing and hunting licenses, for the publishing of a magazine covering subjects relating to fish and game protection, preservation and propagation.

COLUMBUS, OHIO, May 23, 1935.

HON. L. WOODDELL, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

"The Division of Conservation is planning the publication of a 16-page monthly magazine. We would like to have you advise us as to whether or not there are any regulations or laws that would prevent taking of subscriptions for a publication of this kind or for selling advertising space to help maintain the publication.

We believe a publication of this kind is necessary in order to get the greatest results through sportsmen's organizations, farmers, and the public, in the development of a conservation program. Through this medium, we expect to instruct sportsmen and farmers in the problems of game management and to secure their cooperation in behalf of the program of wildlife propagation, protection, and replacement.

We feel that a publication of this kind is necessary in the discharge of our responsibilities and to carry out the program and policies of the Division of Conservation.

Of course we expect to subsidize the publication and to carry it along with hunting and fishing license money. Other States have found a publication of this kind to be a decided advantage and of great value to their program.

We are of the opinion that we could go ahead with a paid subscription list and sell advertising space at such rates as might be determined by the Conservation Council, but we would first like to be officially advised by the Attorney General's Department.

Our present plans for subscriptions are 50 cents per year.

We trust you will be able to advise us officially in this connection."

Section 1438-1 of the General Code, which relates to the powers and duties of the Conservation Council, reads as follows:

"The conservation council shall have authority and control in all matters pertaining to the protection, preservation and propagation of song and insectivorous and game birds, wild animals and fish, except authority to change laws in the General Code covering commercial fishing in the Lake Erie fishing district, and in such other waters wherein fishing with nets is licensed by law, within the state and in and upon the waters thereof. It shall enforce by proper legal action or proceeding the laws of the state for the protection, preservation and propagation of such birds, animals and havens for the propagation of fish and game, and, so far as funds are provided therefor, shall adopt and carry into effect such measures as it deems necessary in the performance of its duties.

The conservation council shall have and take the general care, protection and supervision of the state parks known as Lake St. Marys, Portage Lakes, Lake Loramie, Indian Lake, Buckeye Lake, Guilford Lake and all other state parks and lands owned by the state or in which it is interested or may acquire or become interested, except lands, the care and supervision of which are vested in some other officer, body, board, association or organization.

It is the duty of the conservation council to plan, develop, formulate and institute programs and policies of the division of conservation and to establish such bureaus within the division as are approved by the governor.

The division of conservation is hereby authorized to and shall co-operate with the several state departments and officials in the conduct of matters in which the interests of the respective departments or officials overlap.

The conservation council shall report to the governor from time to time the results of its investigations concerning the natural resources of the state with recommendations of such measures as it deems necessary or suitable to conserve or develop said resources and preserve them as far as practicable.

The conservation council may make and establish such rules and regulations not inconsistent with law governing its organization and procedure and administration of the division of conservation as it may deem necessary or expedient."

Sections 1430, 1432 and 1433 of the General Code, which are pertinent to your inquiry, read in part as follows:

Sec. 1430.

"No person shall take or catch any fish by angling with reel and rod in any of the waters of the state of Ohio, or engage in fishing with reel and rod in such water without first having procured a license so to do. No non-resident shall take or catch any fish by angling with a pole or line in any of the waters of the state of Ohio, or engage in fishing with a pole or line in such waters without first having procured a license.

* * * All moneys derived from such licenses are hereby appropriated for the use of the conservation council for the purchase, protection, propagation, preservation, and stocking of fish, including the establishment, operation and maintenance of fish hatcheries, the leasing, purchasing or otherwise acquiring title to land for said hatcheries, constructing fish chutes and dams and other methods of fish propagation and fish culture, and for use as provided in sections 1438-1 * * * of the General Code."

Sec. 1432.

"Hunter's and trapper's licenses shall be issued by the clerk of the common pleas court, village and township clerks and other authorized agents designated by the conservation commissioner * * * ."

Sec. 1433.

"The clerks and other agents authorized to issue licenses shall issue them in consecutive order of their numbers as stamped on the left upper corner of each license with date and exact time of day of issue plainly written thereon and keep a record of such licenses issued, together with the name and addresses of the persons to whom issued, and shall transmit with their reports to the commissioner, the moneys received as license fees, and may include the amounts paid to the clerks and other authorized agents as their fees, which shall be paid into the state treasury to the credit of a fund which is hereby appropriated for the use of the conservation council in the purchase, preservation, propagation, protection and stocking of birds, game birds, game and fur bearing animals, for establishing and purchasing or otherwise acquiring title to lands for game preserves, and the conservation council is hereby empowered to organize such lands into state game preserves under rules and regulations to be adopted by said conservation council, and the commissioner may employ on such preserves one or more keepers or protectors at such salary and with such duties, as may be prescribed by the conservation commissioner, and for use as provided in sections 1438-1, * * * of the General Code."

By the terms of the above sections, the Conservation Council is given authority in all matters pertaining to the protection, preservation and propagation of fish and

game within this state, and all monies derived from the sale of fishing and hunting licenses is appropriated to its use, to be expended for such purposes. The duty of enforcing by proper legal action, the laws of Ohio for the protection of fish and game, is enjoined upon the Conservation Council, and power is given to the council to perform all acts necessary to carry out such duties.

Statutes which impose duties and grant the necessary powers to perform the duties imposed, such as we are dealing with in the instant case, are to be strictly construed. The rule of construction of statutes granting power is stated in Ohio Jurisprudence, Volume 37, page 739, as follows:

“Legislative grants which contain ambiguous words are generally subject to a strict construction, and are interpreted most strongly against the grantee and in favor of the government. A grant of a part of the sovereignty of the state is presumed to embrace in its terms all that was intended to be granted at all, so that only such powers and rights may be exercised under it as are clearly comprehended within the words of the act,—that is, such as are specifically or expressly conferred thereby, or derived therefrom by necessary implication. It is not to be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed.”

A complete list of cases cited in support of the above text would serve no useful purpose. However, a representative list follows:

Cincinnati vs. Louisville & N. R. Co., 88 O. S. 283;
Parkside Cemetery Asso. vs. Cleveland, B. and G. L. Traction Co., 93 O. S. 161;
Pollitz vs. Public Utilities Commission, 96 O. S. 49;
Elder vs Smith, 103 O. S. 369;
State ex rel. Atty Gen. vs. Hocking Valley R. Co., 12 O. C. C. (N. S.) 145;
Cleveland and P. R. Co. vs. Cleveland, 15 O. C. C. (N. S.) 193.

You state in your communication that the contemplated publication is to be subsidized and supported in part, at least, by monies received from the sale of fishing and hunting licenses. It must be noted that under the provisions of sections 1430 and 1433, General Code, supra, that all of such monies must be used for the purchase, protection, propagation, preservation and stocking of fish, birds, game birds, game and furbearing animals, and for the establishing of fish hatcheries and acquiring of lands for game preserves and for use as provided in section 1438-1, General Code. No other use of such monies is authorized and consequently such monies may not be expended for any other purpose.

While it may be true that the language of the statute conferring powers on the Conservation Council is broad and the scope of power granted is extensive, yet it has its limitations. In the case of *State, ex rel. Clarke, vs. Cook, Auditor*, 103 O. S., page 465, it is stated on page 467, that:

“The powers of administrative boards created by statute are necessarily limited to such powers as are clearly and expressly granted by the statute.”

Again, it was so declared in the case of *State, ex rel. Locher, vs. Menning, et al.*, 95 O. S., page 97, that:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. 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."

The first branch of the syllabus of the case of *Schwing vs. McClure, et al., Trustees*, 120 O. S., page 335, reads as follows:

"Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

Clearly, no power is expressly granted by the statutes authorizing the Conservation Council to publish a magazine. Therefore, we must determine whether the publishing of a magazine such as is contemplated, is necessary to carry out the express powers given by statute. Such publication might be desirable, or even appropriate, yet from the clear language of the decisions the implied powers of administrative bodies are limited to such as are necessary to carry out the express power granted.

As stated, the statutes to which administrative boards owe their existence, are the source and limit of their powers, and they have only such powers which are expressly conferred and such as are necessary to carry the express powers into effect. Pertinent to your question it might be observed that in the case of boards of health, the powers actually and expressly conferred by statute are very broad and the proceedings authorized in the performance of them are sometimes of the most summary character. Yet, when it was deemed necessary for boards of health, through the medium of publication, to keep the public fully informed in regard to health matters, the legislature specifically provided for such publication by the enactment of section 1236-1 of the General Code, which reads as follows:

"The commissioner of health shall publish and distribute to every health officer in the state a public health manual, which shall contain all laws relating to the powers and duties of health officials, the sanitary regulations adopted by the public health council and such other information and instructions as he may deem advisable. He shall keep health officials and the general public fully informed in regard to the work of the state department of health and on the progress that is being made in studying the cause and prevention of disease and such kindred subjects as may contribute to the welfare of the people of the state."

It would seem that there is here a case of clear application of the maxim of *expressio unius est exclusio alterius*.

Section 1438-1, *supra*, provides that the Council shall have the *authority and control* in all matters pertaining to the protection and preservation of fish and game. It is a familiar rule of construction that words of a statute will be construed in their ordinary acceptation and significance, and with the meaning commonly attributed

to them. Applying the above rule and giving the words "authority and control" their natural and full meaning, the statute nevertheless would grant only the power to carry out the duties of the Conservation Council and to give to the Council complete supervision and superintendence of the enforcement of the fish and game laws. To hold otherwise would be to extend the language of the statute beyond its actual import and effect.

Whether or not advertising space in such magazine is to be sold is of no importance in determining the question.

It is accordingly my opinion, in specific answer to your question, that the Conservation Council is not authorized to expend monies derived from the sale of fishing and hunting licenses, for the publishing of a magazine covering subjects relating to fish and game protection, preservation and propagation.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4282.

WORKMEN'S COMPENSATION ACT—UNDER H. B. #102 SELLER TO STATE OR ITS SUBDIVISIONS MUST FILE AFFIDAVIT OF COMPLIANCE WITH WORKMEN'S COMPENSATION LAW—NON-RESIDENT WHO HAS NOT COMPLIED MAY NOT FILE AFFIDAVIT.

SYLLABUS:

1. *Under the provisions of House Bill 102 of the 90th General Assembly, a person as therein defined selling materials or supplies to the state or its subdivisions must certify under oath that such person "has fully complied with all the requirements of the workmen's compensation act of the state of Ohio."*

2. *A non-resident of Ohio who is not doing business in Ohio and who has not complied with the requirements of the workmen's compensation act of Ohio may not subscribe to such affidavit.*

COLUMBUS, OHIO, May 23, 1935.

HON. B. FRANK THOMAS, *Superintendent of Purchases and Printing, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Will you kindly advise how the application of House Bill 102 will apply to purchases outside the state, especially to the stamp requirements, as we have a number scattered throughout the United States who will no doubt bid upon our requisitions."

I am advised that the reference in the foregoing letter to the purchases outside the state is to purchase from sellers who are not doing business in this state,—that is to say, you desire my opinion on the question of your right to purchase materials or supplies for the state from a seller domiciled outside of Ohio who is not doing business in this state, and your authority to consider a bid submitted by such person.