

1748.

CONSERVATION AND NATURAL RESOURCES, DIVISION OF
—NO AUTHORITY TO EXPEND FUNDS TO AWARD PRIZES
FOR CROW HUNTS SPONSORED BY IT.

SYLLABUS:

The Conservation and Natural Resources Commission has no authority to expend funds in the awarding of prizes for crow hunts sponsored by such Commission.

Columbus, Ohio, January 22, 1940.

Hon. Don Waters, Commissioner, Division of Conservation and Natural Resources,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads in part as follows:

“At the last meeting of the Conservation Commission, a request was made by one of the members of the Commission for the appropriation of \$1,000, for the purpose of prizes to be given to sportsmen’s organizations for crow hunts to be held over the State.

No action was taken on this matter and I was requested to secure a ruling from you as to the legality of using Conservation funds for this purpose.”

The general powers of the Conservation and Natural Resources Commission are set out in Section 1438-1 of the General Code, as follows:

“The conservation and natural resources commission shall determine the policies of the division of conservation and natural resources and shall plan, develop and institute programs and policies of the division of conservation and natural resources and establish such bureaus and positions as it deems necessary to carry into effect its policies and programs. It shall have authority and control in all matters pertaining to the protection, preservation, propagation and management of birds, wild animals, game, fur-bearing animals, clams, mussels, crayfish, aquatic insects and fish, except authority to change the 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 have authority

to establish rules and regulations, any provision in the statutes to the contrary notwithstanding, for the taking and hunting of game birds, clams, mussels, crayfish, aquatic insects, fur-bearing animals, game and fish and shall determine the time during which game birds, fur-bearing animals, game, clams, mussels, crayfish, aquatic insects and fish may be taken or hunted, and shall specify the number of any kind of such game birds, clams, mussels, crayfish, aquatic insects, fur-bearing animals, game or fish permitted to be taken in such specified time.

The conservation and natural resources commission, 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, such part of the Pymatuning Reservoir as lies in Ohio 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 and lakes, the care and supervision of which are vested in some other officer, body, board, association or organization.

The conservation and natural resources commission shall employ the commissioner of conservation and natural resources by a majority vote of the commission who shall serve until such time as he may be removed by a majority vote of the conservation and natural resources commission or until a successor shall be employed by a majority vote of such commission. The commissioner of conservation and natural resources shall be a practical executive with experience, education and skill in the conservation of natural resources.

The conservation and natural resources commission shall give such publicity by advertising and otherwise as it deems expedient to all of its rules and regulations, except rules and regulations covering the organization and procedure of the commission, and copies of such rules and regulations shall be filed with the clerk of each county affected thereby. It shall enforce by proper legal action or proceeding the laws of the state for the protection, preservation, propagation and management of birds, animals, sanctuaries and refuges for the propagation of fish and game, and shall adopt and carry into effect such measures as it deems necessary in the performance of its duties.

The conservation and natural resources commission is hereby authorized to enter into contracts and agreements with other departments and subdivisions of this state and with other states and the United States for the accomplishment of the purposes for which it is created, and shall cooperate with and shall not infringe upon the rights of other state departments, political subdivisions, and other public officials and public and private agencies in the conduct of conservation plans and other matters in which the interests of the conservation and natural resources commission and such other departments and agencies overlap.

The conservation and natural resources commission shall re-

port 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 and natural resources commission shall make an annual report to the governor of its activities and shall render a detailed financial report by bureaus covering the receipts and expenditures of all moneys. Such report shall be made by March 1 for the preceding year and shall be published. The conservation and natural resources commission may make and establish such further rules and regulations not inconsistent with the law governing its organization and procedure and administration of the conservation and natural resources commission as it may deem necessary or expedient."

The above section provides inter alia that the Conservation and Natural Resources Commission shall determine the policies of and develop and institute programs for the Division of Conservation and Natural Resources. It is further provided that such Commission shall have authority and control in all matters pertaining to the protection, preservation, propagation and management of birds, wild animals, game, etc.

Section 1438-1, General Code, was amended in Amended Senate Bill No. 165, passed by the 93rd General Assembly, March 28, 1939. However, the changes made in said section are not material to the instant question.

Section 1438-1, General Code, was construed in 1935 Opinions of the Attorney General at pages 604 and 605 as follows:

"Section 1438-1, supra, provides that the council (now Conservation and Natural Resources Commission) 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."

(Parenthetical matter the writer's)

It is true that the language of the statute conferring powers on the Conservation and Natural Resources Commission is broad, yet such lan-

guage has limitations. The statute to which such Commission owes its existence is the source of the limit of its powers. It has only such powers as are expressly conferred and such as are necessary to carry the express powers into effect. In the case of *State, ex rel. Clarke vs. Cook, Auditor*, 103 O. S. 465, it was stated at page 467:

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

The general rule as to the expenditure of public funds by public officers or bodies was set out in the case of *State, ex rel. Locher vs. Menning, et al.*, 95 O. S. 97 at page 99 as follows:

“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.”

An examination of Section 1438-1, *supra*, reveals that no express power is given to the Conservation and Natural Resources Commission to carry on a program relating to the taking or hunting of crows nor does it appear that such action is necessary to carry out the express powers granted to the Conservation and Natural Resources Commission. It may be that such a program might be advantageous in some respects. However, unless the Legislature has authorized such a program, the same can not be undertaken by the Commission. In Sections 1410-1 to 1410-3, inclusive of the General Code, the Legislature has specifically directed the county to pay a bounty of twenty-five cents for each crow killed in this state by an inhabitant thereof. However, as heretofore stated, no authority is given the Conservation and Natural Resources Commission to carry on the program proposed in your communication.

In view of the above and in specific answer to your inquiry, I am of the opinion that the Conservation and Natural Resources Commission has no authority to expend funds in the awarding of prizes for crow hunts sponsored by such Commission.

Respectfully,

THOMAS J. HERBERT,
Attorney General.