

779.

FISH AND GAME—HUNTING LICENSE—NON-RESIDENT OF STATE OF OHIO — MAY NOT LAWFULLY HUNT OR TRAP ON LANDS OWNED BY HIM IN OHIO WITHOUT A NON-RESIDENT HUNTING LICENSE — EXEMPTION — FOREIGN STATE—SECTION 1431 G. C.

SYLLABUS:

Under the provisions of Section 1431 of the General Code of Ohio, a non-resident of the State of Ohio may not lawfully hunt or trap on lands owned by him within this state without first having secured an Ohio non-resident hunting license.

COLUMBUS, OHIO, June 20, 1939.

HON. DON WATERS, *Commissioner, Division of Conservation, State Office Building, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent request for my opinion, which request reads as follows:

“In order to clarify Section 1431 of the General Code of Ohio and provide for uniform enforcement of the fish and game laws, we find it necessary to request a formal opinion on the following question:

Can a non-resident of the State of Ohio lawfully hunt or trap on lands owned by him within this State without first having secured an Ohio non-resident hunting license?”

Section 1431 of the General Code of Ohio reads as follows:

“No person shall hunt, pursue or kill with a gun any wild bird or wild animal, or take, catch, or kill any fur-bearing animals by the aid or use of any trap or other device, within the State, without first having applied for and received a hunter's and trapper's license as required herein. Every applicant for a hunter's and trapper's license, who is a non-resident of the State of Ohio and who is a citizen of the United States of America, shall pay a fee of the same amount as is charged and received from non-residents by the state of which the applicant is a resident for a similar license (not, however, less in any case than five dollars) to the officer, or deputy issuing same. Every applicant for hunter's and trapper's license who is a citizen of the United States of America, and a resident of the state of Ohio, shall pay a fee of one dollar, but the owner, manager, tenant or children of the

owner, manager or tenant of lands within this state may hunt and trap upon such lands without a hunter's and trapper's license."

The answer to your question must be determined from an examination of Section 1431, *supra*. A search of the court decisions and the opinions of the Attorney General reveals that the point you have raised has not been decided in Ohio.

The first sentence of Section 1431, *supra*, provides that no person shall hunt, etc. without a license. The second sentence sets forth the fee for a non-resident hunting license. The third sentence provides for the fee to residents of Ohio and appended as a part of the same sentence is the clause providing for the exemption of an owner, etc. of lands in Ohio. The question is, therefore, whether the exemption clause applies only to residents of Ohio or whether it includes also the class of non-residents referred to in the preceding sentence.

In the case of *Buckman, Auditor vs. The State, ex rel. Board of Education*, 81 O. S. 171, the court said at page 180:

"As a general rule, unless the contrary intention plainly appears, a proviso is to be construed with reference to the immediately preceding paragraph to which it is attached, and qualifies or limits only the part or paragraph to which it is appended."

In 59 C. J. at page 985, the following pronouncement is made:

"By what is known as the doctrine of the 'last antecedent,' relative and qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to or including others more remote."

Again in 59 C. J. at page 1090, it is stated:

"The operation of a proviso is usually and properly confined to the clause or distinct portion of the enactment which immediately precedes it, and does not extend to or qualify other sections, unless the legislative intent that it shall so operate is clearly disclosed."

In 25 R. C. L. at page 985, the same rule of statutory construction is set forth in the following language:

"And as a general rule, a proviso is deemed to apply only to the immediately preceding clause or provision."

In the case of *United States vs. Morrow*, 266 U. S. 531, wherein the court was confronted with a similar situation, it is stated in the second and third branches of the syllabus:

“The presumption is that a proviso in a statute refers only to the provision to which it is attached.

The proviso in the Acts of Congress of 1915 and 1916, relating to the increase in the pay of clerks and messengers at headquarters of territorial departments of the Army, increasing the pay of clerks and messengers while serving in the Philippine Islands, is limited to the persons whose pay is fixed by the clause to which the proviso is attached, and does not apply to a clerk in the depot quartermaster’s office, whose pay was fixed by the War Department.”

The court, in discussing the construction of a proviso, stated at page 534:

“Its grammatical and logical scope is confined to the subject-matter of the principle clause.”

Applying the rule of statutory construction above pronounced, it appears that the exemption of owners, etc. of land in Ohio from the necessity of obtaining hunting licenses can apply only to resident owners in Ohio. Such must have been the intention of the Legislature in enacting the law since the exemption is appended to the provision relative to residents of Ohio.

Therefore, in specific answer to your inquiry, I am of the opinion that under the provisions of Section 1431 of the General Code of Ohio, a non-resident of the State of Ohio may not lawfully hunt or trap on lands owned by him within this state without first having secured an Ohio non-resident hunting license.

Respectfully,

THOMAS J. HERBERT,
Attorney General.