

1251

FIELD TRIALS FOR DOGS—SECTION 1436-2 G. C.—MANDATORY, DIVISION OF WILDLIFE SET ASIDE AREAS FOR FIELD TRIAL PURPOSES—LAND OWNED OR CONTROLLED BY STATE IN CONSERVATION DISTRICTS WHEN SUCH LANDS ARE AVAILABLE.

## SYLLABUS:

Section 1436-2, General Code, makes it mandatory that the Division of Wildlife set aside areas for field trial purposes on land owned or controlled by the state in the conservation districts of the state when such lands are available whereon field trials for dogs may be conducted.

Columbus, Ohio, March 14, 1952

Dr. Charles A. Dambach, Chief, Division of Wildlife  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which reads in part as follows:

“Specifically I wish to know whether or not Section 1436-2 makes it mandatory that the Division of Wildlife set aside areas for field trial purposes in the conservation districts in the state, on areas owned or controlled by it when in the opinion of the Division the primary use of such areas should be for public hunting.”

Section 1436-2, General Code, to which your request refers, reads as follows:

“The Division of Wildlife of the Department of Natural Resources shall be empowered to acquire by gift, lease or purchase lands to be used and developed for the purpose of conducting field trials for dogs. The Division *shall* set aside field trial areas on land owned or controlled by the state of Ohio in each of the conservation districts *when such lands are available whereon field trials for dogs may be conducted*, and shall stock the same with wild game. Such areas may be used by the Division for propagation of wildlife and for wildlife experimental purposes, provided such experiments do not interfere with the use thereof for field trials. Permission may be granted clubs and individuals to stock such areas with wild game and provide food and shelter for such game.”  
(Emphasis added.)

The above quoted section of the General Code indicates, by the use of shall, that it is mandatory that the Division of Wildlife set aside field trial areas on state land when such lands are "available" for use as such. The whole problem then centers on an interpretation of "available" as used by the General Assembly. Webster's Collegiate Dictionary, Fifth Edition, defines "available" as follows:

"1. Capable of availing, effectual \* \* \*

"3. \* \* \*, usable."

This definition makes "available" a term that depends upon a determination by someone as to its applicability or use. In other words, before a thing is said to be available, someone must determine that such a condition exists.

In each instance, the adaptability, the suitability or the extent of such an area for field trial purposes, in coincidence with other uses in relation to wildlife purposes, either separately or intermittently, appear to be matters which are determined by the Division of Wildlife. Once the Division has made a determination, like any administrative act or order, it is binding until set aside in a court of law. The Division having determined that an area is available in a conservation district for use as a field trial area, then, regardless of the fact that such area might also be used for general public hunting, the mandatory language of the statute requires the Division to set aside the area for field trial purposes.

The fact that an area has been set aside as a field trial area on state owned or leased lands does not, however, preclude the Division from providing for hunting and trapping in that area. Section 1436-4, General Code, covers this and reads in part as follows:

"\* \* \* Hunting or trapping within a field trial area shall be unlawful, except as may be provided by the division of wild life of the department of natural resources for state owned or leased field trial areas. \* \* \*"

In specific answer to your inquiry, it is my opinion, and you are so advised, that it is mandatory that the Division of Wildlife set aside areas for field trial purposes on land owned or controlled by the state in the

conservation districts of the state when such lands are available whereon field trials for dogs may be conducted.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General