

998.

SQUIRRELS—RED SQUIRRELS ARE NOT RESTRICTED BY GAME LAWS
—MAY BE HUNTED AT ANY TIME OF YEAR.

SYLLABUS:

Red squirrels are without the prohibitions and restrictions of the Game Laws of Ohio and therefore may lawfully be hunted, taken and possessed at any time of the year.

COLUMBUS, OHIO, September 14, 1927.

HON. D. O. THOMPSON, *Chief, Department of Agriculture, Division of Fish and Game, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated September 9, 1927, which reads as follows:

“Since there has been a change in the law governing squirrel closing the season in 1927 and every odd numbered year thereafter, we have had many inquiries with regard to hunting the red squirrels this year, whether they are protected under this new law or not.

I will kindly ask you to give me your opinion at an early date in regard to the red squirrel. A great many sportsmen, no doubt, will use this as an alibi to get into the field to illegally hunt gray and fox squirrels which are protected under the Fish and Game Laws.”

As stated in 27 Corpus Juris 942:

“In accordance with the rules which govern property in wild animals generally, the ownership of game, so far as it is capable of ownership, is in the state for the benefit of all its people in common, and a private person cannot acquire an exclusive property therein except by taking and reducing the game to actual possession, or by a grant from the government, and subject to such limitations or restrictions as the legislature may see fit to impose.”

And on page 945 of the same volume:

“By reason of the state’s control over game within its limits, it is within the police power of the state, legislature subject to constitutional restrictions, to enact such general or special laws as may be reasonably necessary for the protection of the public’s rights in such game, even to the extent of restricting the use of or right of property in the game after it is taken or killed; and such a statute should receive the construction most reasonable and best suited to accomplish its purpose, but should not be construed to embrace cases not clearly within its terms.”

In accord with the general rule of law in this regard, the legislature, on May 10, 1919, (108 O. L. Pt. 1, 577) passed an act entitled:

“An act—To codify fish and game laws of Ohio, and to repeal sections of the General Code relating thereto.”

Section 2 thereof, now Section 1391, General Code, reads as follows:

"The ownership of, and the title to all fish, wild birds and quadrupeds in the State of Ohio, not confined and held by private ownership, legally acquired, is hereby declared to be in the state, which holds it in trust for the benefit of all the people, and only in accordance with the terms and provisions of this act shall individual possession be obtained. No person shall at any time of the year take in any manner, number or quantity, fish, wild quadrupeds or birds protected by law, or buy, sell, offer or expose for sale, the same or any part thereof, transport or have the same in possession, except as permitted by this act; and this prohibition shall be construed as part of each permissive section or part thereof. A person doing anything prohibited, or neglecting to do anything required by this act, with reference to such fish, quadrupeds or birds, shall be deemed to have violated this section. A person who counsels, aids or assists in the violation of a provision of this act, or knowingly shares in any of the proceeds of such violation by receiving or possessing either a fish, quadruped or bird shall be deemed to have violated this section. Hunting or taking a wild bird or wild game on Sunday is prohibited."

Section 1 thereof entitled "Definitions," which now appears as Section 1390, General Code, defines certain words and phrases used in the act as follows:

"Game: Both game quadrupeds and game birds.

Game quadrupeds: Hare or rabbit, gray squirrel, fox squirrel and deer.

Quadrupeds: Game quadrupeds and fur-bearing animals.

Fur-bearing animals: Fox, mink, raccoon, skunk, muskrat, opossum."

An examination of Section 1391, *supra*, interpreted in the light of the definitions of Section 1390, *supra*, indicates that it was the intent of the legislature to claim ownership in and restrict and prohibit the individual possession of such fish, wild birds and quadrupeds only as are in contemplation of the definitions in Section 1390, General Code. In other words the legislature has evidenced its intent that when the word "quadruped" was used in the acts pertaining to game and game animals, such word should be construed to mean "game quadrupeds and fur-bearing animals" only and that "game quadrupeds" should include only "hare or rabbit, gray squirrel, fox squirrel and deer."

Section 8 of the act above referred to became Section 1397, General Code, and read as follows:

"Squirrel. a. Open season. Squirrels may be taken and possessed from the fifteenth day of September to the twentieth day of October only, both inclusive.

b. Limit. A person may take in one day and have in his possession at one time, not more than five squirrels.

2. Sale prohibited. Squirrels whether taken within or without the state shall not be bought or sold at any time. Each squirrel taken or had in possession, contrary to the provisions of this section, shall constitute a separate offense."

The 87th General Assembly, on April 21, 1927, passed an act entitled:

"An Act—To amend Sections 1396, 1397 and 1402 of the General Code and to supplement Section 1402 by the enactment of supplemental Section 1402-1, relative to game protection."

which act was approved by the Governor and became effective August 3, 1927. Section 1397, General Code, now reads as follows:

"Squirrel. a. Open season. Squirrels may be taken and possessed from the first day of October to the fifteenth day of October only, both inclusive. First open season to be October 1, 1928, and every two years thereafter, the year 1927 shall be a closed season and all odd numbered years thereafter shall be considered as closed seasons.

b. Limit. A person may take in one day and have in his possession at one time, not more than four squirrels.

c. Sale prohibited. Squirrels whether taken within or without the state shall not be bought or sold at any time. Each squirrel taken or had in possession, contrary to the provisions of this section shall constitute a separate offense."

An examination of Section 1397, supra, before and since its recent amendment discloses that the only changes therein were as regards the open season and bag limit. In other words, the restrictions and prohibitions against taking, possessing and selling squirrels generally as regards genus or species are no different now than they were before.

I am not unmindful of the fundamental rule of statutory construction to the effect that words in common use are to be construed in their natural, plain and ordinary signification and to the general rule that where there is one statute dealing with a subject in general comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute.

Bearing in mind, however, that original Section 1397, supra, was enacted at the same time and a part of the same act as Sections 1391 et seq., of the General Code these several sections must be construed as statutes in *pari materia*. It was the evident intent of the legislature to take title to and restrict and prohibit the taking, possessing and selling of certain animals, viz., quadrupeds as defined and construed in said act. In other words, when the legislature enacted Section 1397, supra, and used the broad term "squirrels" it did not intend to restrict and prohibit the hunting and taking of all squirrels but only those defined as "game quadrupeds" in Section 1390, General Code, viz., gray squirrel and fox squirrels.

You invite to my attention a letter dated August 19, 1926, addressed to Hon. D. O. Thompson, Chief, Department of Agriculture, Division of Fish and Game, Columbus, Ohio, and signed by the then Attorney General, C. C. Crabbe, which letter reads as follows:

"Permit me to acknowledge receipt of your letter concerning red squirrels in which you enclose a copy of letter received from Judge Jones, Wooster, Ohio, referring to his decision dismissing a case brought against the boy in Juvenile Court on the charge of shooting squirrels out of season.

I notice that Judge Jones says that no decision was handed down but the proceeding was simply marked 'Dismissed'. Dismissal of such a case on such a charge may mean that the evidence produced did not sustain the charge.

Section 1390, G. C., defines game quadrupeds as 'Hare or rabbit, gray squirrel, fox squirrel, and deer.' Section 1397, G. C., provides an open season for squirrels, limits the number that may be taken to five, and prohibits the sale of the same. Nowhere in the statute is red squirrel or ground squirrel

named. Hence this general section, Section 1397, can only refer to the squirrels named in the definition of game quadruped.

I, therefore, conclude that red squirrel is not protected by the Game Code."

I concur in the conclusions reached by my predecessor in the letter above referred to.

In view of the foregoing and answering your question specifically I am of the opinion that red squirrels are without the prohibitions and restrictions of the Game Laws of Ohio and therefore may lawfully be hunted, taken and possessed at any time of the year.

Respectfully,
EDWARD C. TURNER,
Attorney General.

999.

BOND ISSUE—ISSUE AUTHORIZED IN 1923 BUT NEVER ISSUED BECAUSE OF TAX LIMITATIONS MAY NOW BE ISSUED—PROCEDURE OUTLINED.

SYLLABUS:

1. *A \$600,000.00 bond issue properly authorized by vote of the electors of a municipality at the August, 1923, primary election, but never issued because of tax limitations, may now be issued, and the issuance thereof is a condition precedent to submitting the question of the exempting of a levy for the redemption of such bonds and for the interest from the fifteen mill limitation at the November, 1927, election under the provisions of Sections 15, et seq., of House Bill No. 80, passed by the 87th General Assembly on April 13, 1927.*

2. *The better procedure would be to submit the questions both of issuing the bonds and exempting the levy at the same election and on the same ballot under the provisions of Sections 2293-19 to 2293-23, General Code, both inclusive, as enacted by the 87th General Assembly in House Bill No. 1, passed April 21, 1927.*

COLUMBUS, OHIO, September 14, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication reading as follows:

"In 1923 the council of the city of ----- passed a resolution providing for an issue of bonds in the sum of \$600,000.00, which resolution was submitted to the electors at the August, 1923, primary and received a favorable vote. The bonds have never been issued however, because of the local tax situation but council now desires to issue the bonds and to submit the question of the exempting of a levy for their redemption and interest at the November election in the current year.

Laws governing both issues and elections, etc., have been changed and amended since the passage of the original resolution and we will appreciate your opinion as to the legality of submitting a tax levy question, as proposed, and issuing the bonds under the original resolution."