

4983.

CONSERVATION COUNCIL—MAY PROHIBIT TRAPPING OF
RACCOON WITHIN TEN FEET OF TILE OR CULVERT.

SYLLABUS:

1. *Under the powers conferred by Section 1438-1 of the General Code, the Conservation Council may establish an order prohibiting trapping of raccoon within ten feet of a tile or culvert.*

2. *However, the Conservation Council is without power to establish such an order if the same prohibits the trapping by the public within ten feet of a tile or culvert and permits landowners and their tenants to trap such animals within ten feet of a tile or culvert.*

COLUMBUS, OHIO, December 10, 1935.

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

DEAR SIR:—This will acknowledge receipt of your request for my opinion upon the following facts in question:

The Conservation Council desires to promulgate an order prohibiting persons from trapping raccoon within ten feet of a tile or culvert, and allowing landowners and their tenants to trap such animals within ten feet of such tile or culvert. Question: May the Conservation Council, in the proper exercise of the powers conferred upon it by statute, make such an order?

The powers conferred upon the Conservation Council with reference to making rules and regulations for the taking and hunting of game are contained in section 1438-1 of the General Code, which reads in part as follows:

“The conservation council shall have authority and control in all matters pertaining to the protection, preservation and propagation of birds, wild animals, game, fur-bearing animals, clams, mussels, and fish, except authority to change laws in the General Code covering commercial fishing in the Lake Erie fishing district, and in such other water wherein fishing with nets is licensed by law, within the state and in and upon the waters thereof. The Council 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, fur-bearing animals, game and fish and shall determine the time during which game birds, fur-bearing animals, game, clams, mussels, and fish may be taken or hunted, and shall specify the number of any kind of such game birds, clams, mussels, fur-bearing animals, game or fish permitted to be taken in such specified time.”

At the outset it might be stated that the power of the legislature to delegate the above powers to the Conservation Council may be questioned, on constitutional grounds. On that point I am rendering no opinion, as it has always been the policy of this office to regard the passing on the constitutionality of a duly enacted statute as a function of the courts.

It is the fundamental rule that when the legislature in the delegation of powers to administrative boards, declares its policy and fixes the standards to be followed, such administrative boards may, under the powers granted, act only in furtherance of said policy and within the limitations of the standards fixed. *Field vs. Clark*, 143 U. S. 649; *Butterfield vs. Stranahan*, 192 U. S. 470; *Union Bridge Co. vs. Clark*, 204 U. S. 364.

It will be noted that section 1438-1, supra, grants authority to the Conservation Council in all matters pertaining to the protection, preservation and propagation of all wild animals, game, fur-bearing animals and fish. In so doing, the legislature has declared its policy and fixed definite standards for administrative guidance and limitation. In other words, by the terms of the statute, it is manifest that it was the intention of the legislature to confer upon the Conservation Council certain powers relative to making orders and regulations for the taking of game, to be exercised by it when the Conservation Council, in its judgment, determines that the protection and preservation of wild life require such action.

Therefore, the establishing of the proposed order would be justified only in the event that the Conservation Council has determined that raccoon are in danger of extinction or depletion and require additional protection. If such is the case, there would, in my opinion, appear to be no reason for permitting landowners to take raccoon in a different manner than the general public.

It is a well established principle that not all classification in legislation is invalid. However, it is equally well settled that a classification must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. *Bloomfield vs. State*, 86 O. S. 253; *Xenia vs. Schmidt*, 101 O. S. 437; *Froelich vs. Toledo*, 24 O. C. C. 359.

The above principles of law which must be applied to legislative classifications in order to determine their validity are equally applicable to orders made by administrative bodies pursuant to powers conferred by the legislature. In the above proposed order of the Conservation Council, the classification set out therein bears no substantial relation to the object sought to be accomplished and is not based upon any justifiable distinction, considering the purpose of said order.

It is, therefore, my opinion that the Conservation Council may, under the powers conferred upon it by Section 1438-1, General Code, establish an order prohibiting the trapping of raccoon within ten feet of a tile or culvert;

however, if such order is made, it may not be provided therein that land-owners and their tenants are permitted to trap raccoon within ten feet of such tile or culvert.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4984.

APPROVAL, BONDS OF CITY OF GARFIELD HEIGHTS, CUYA-
HOGA COUNTY, OHIO, \$3,000.00.

COLUMBUS, OHIO, December 10, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4985.

APPROVAL, BONDS OF CITY OF EUCLID, CUYAHOGA
COUNTY, OHIO, \$31,000.00.

COLUMBUS, OHIO, December 10, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4986.

OFFICES COMPATIBLE—MEMBER RURAL BOARD OF
EDUCATION AND COUNTY ATTENDANCE OFFICER.

SYLLABUS:

A member of a rural board of education, who is not a member of a county board of education, may at the same time hold the position of county attendance officer, if it is physically possible to perform the duties of both positions.

COLUMBUS, OHIO, December 10, 1935.

HON. MANNING D. WEBSTER, *Prosecuting Attorney, Pomeroy, Ohio.*