"But while the Legislature has power to regulate and limit the time and manner of taking fish in waters which are public breeding-places or passage-ways for fish, it has not assumed to interfere with the privileges of the owners of private ponds having no communication through which fish are accustomed to pass to other waters. Such ponds, whether natural or artificial, are regarded as private property, and the owners may take fish therefrom whenever they choose, without restraint from any legislative enactment, since the exercise of this right in no way interferes with the rights of others."

It appears to me that a lake or pond or other body of water which is privately owned is under the control and jurisdiction of its owners and the State of Ohio has no jurisdiction over it for the purpose of regulating fishing therein, unless such bodies of water have some communication with other bodies of water through which fish are accustomed to pass.

Specifically answering your inquiry, I am of the opinion that persons engaged in fishing by angling with reel and rod in a privately owned lake, pond or other body of water which has no communication with any other body of water through which fish are accustomed to pass, are not required to procure a license, as provided in Section 1430, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

817.

COUNTY RECORDER—NO FEE CHARGEABLE FOR FILING LIENS DESIGNATED IN SECTION 13435-5, GENERAL CODE.

SYLLABUS:

The phrase "such liens", as used in Section 13435-5, General Code, refers to the lien described with particularity in the former part of the section and therefore the Legislature, by its language employed, failed to provide a fee for recording, filing, indexing and canceling the same.

COLUMBUS, OHIO, September 3, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

"Section 13435-5 of the General Code, as enacted by the 88th General Assembly, effective July 1, 1929, being part of the Code of Criminal Procedure of Ohio, reads as follows:

'The recorder of the county in which the property of the surety is located, shall properly keep and file all such notices of liens and notices of discharges as hereinbefore provided, as may be filed with him, and shall keep in addition thereto, a book or record in which he shall properly index such notices of liens and notices of discharges, as they may be filed with him. Such recorder shall receive from the county treasurer such fees as are provided by law for such recording, filing, indexing and canceling such liens to be paid on the certificate of the clerk approved by the court.'

It is particularly the latter part, beginning with 'such recorder shall receive', etc., pertaining to the fees that the recorder shall receive for keeping and filing such notices, etc. We assume that it should read as though there was a comma after 'such liens' in next to the last line.

We wish to know if there is a special schedule of fees which the recorder should follow, or does the phrase 'provided by law' mean the fees that the recorder now charges for recording, filing, indexing and canceling liens in general?"

The language used by the Legislature, to the effect that the recorder shall receive from the county treasurer such fees as are provided by law for recording, filing, indexing and canceling such lien makes a difficult question to determine. It is a well established proposition of law in this state that moneys may not be drawn from the county treasury or a fee may not be charged by an officer except in pursuance of clear and express provisions of law. The question you present, of course, is, in substance, what is intended by the Legislature by the use of the word "such" in connection with the sentence in which it appears. This term, it will be conceded, has a number of meanings, depending upon its connection with the context in which it is used. At times it is used for the purpose of comparison. In other instances it is used as a description of things identical, etc. It is generally conceded that it may be used as a synonym for the words "like" and "similar".

It is evident that there were no provisions made for the fees in connection with the recording of the particular lien mentioned in the act to which you refer. However, there are instances in which the Legislature has made similar provision when there was no fee which could be charged. While we can only speculate as to what the Legislature meant, of course it could have been under the apprehension that in other sections of the act a specific fee would be provided for the particular lien therein provided for. Likewise, it could have been the intent of the Legislature that such a fee was to be charged when and if the Legislature later saw fit to make such provision. Of course, it is possible that it could have had in mind that the same fees were to be charged for this service as were provided for other similar liens.

Without undertaking to discuss the many decisions upon the interpretation of the word "such", it is believed sufficient to state that the natural import of the word when used in a statute is to limit the application to a person or thing previously mentioned, in the absence of something to show that it is not used for the purposes of comparison as to quality or character. *Integrity Mutual Insurance Company* vs. *Bois,* 127 N. E. 748. In other words, where the Legislature has with particularity set out a description of a definite or certain thing, such as the lien mentioned in the statute under consideration, and then refers to "such lien", it is believed that a fair interpretation is to limit the word "such" to the particular lien mentioned. If the Legislature had intended that fees for similar or like services were to be charged, it could have very easily used appropriate language to convey such intent.

In Opinions of the Attorney General for the year 1920, at page 517, the question was considered as to what fee, if any, should be charged for the registration of a certificate of an optometrist by the clerk of courts. The statute provided that the party registering the same should "pay therefor such fee as may be lawfully chargeable for such registry." The then Attorney General held, as disclosed by the second branch of the syllabus, that:

"The fees chargeable by the clerk of courts are fixed by statute, and the Legislature in the language used in Section 1295-29 relating to the fee, for such registry, failed to provide any fee for such purpose. However, the failure of the fee does not excuse the said clerk of courts from making said registry."

In the body of said opinion it was pointed out that while there were other fees provided for similar services, such as recording a notary public's commission, the same did not authorize a fee in connection with the registering of an optometrist's certificate.

The case of *Clark* vs. *Commissioners,* 58 O. S., 107, was cited in said opinion, in which it was held:

> "To warrant the payment of fees or compensation to an officer, out of the county treasury, it must appear that such payment is authorized by statute."

Another angle that gives rise to some difficulty in connection with your inquiry is as to the purpose of requiring a fee under such circumstances. Section 2983 of the General Code requires each county officer to pay into the county treasury all fees, costs and penalties collected by his office and further expressly provides that no such officer shall collect any fees from the county. The Legislature in the enactment of the provision under consideration certainly did not intend that any fees to be charged were to be retained by the recorder. The fact that the same are authorized to be collected would seem to be inconsistent with the provisions of said section in so far as it authorizes the payment out of the county treasury. In any event, if the statute under consideration can be said to provide for a fee, which the recorder is authorized to collect from the county treasurer, it follows that he would have to again return it to the county treasury in pursuance of the provisions of Section 2983.

While the question as hereinbefore indicated is not free from doubt, I am of the opinion that in the language used the Legislature has failed to provide for the collection of fees from the county treasurer for the recording, filing, indexing and canceling of the lien provided for under Section 13435-5 of the General Code. As hereinbefore pointed out, in the final analysis the results are the same in so far as the financial status of the county is concerned, because if said fees were collected they would have to be returned to the county treasury.

Respectfully,
GILBERT BETTMAN,
Attorney General.

818.

DISAPPROVAL, DEED TO LAND OF JOURNEY AND ZEPHYR ANDERSON IN THE CITY OF COLUMBUS, FRANKLIN COUNTY.

COLUMBUS, OHIO, September 3, 1929.

HON. CARL E. STEEB, *Business Manager, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a deed form of a warranty deed to be executed by Journey Anderson, and Zephyr Anderson, his wife, conveying to the State of Ohio Lot No. 7 of Critchfield and Warden's subdivision of the south half of the north half of Lot No. 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus, Ohio, which lot is more fully described in Opinion No. 760 of this department directed to you under date of August 17, 1929.

An examination of the deed form submitted shows that the same when properly executed by said Journey Anderson and Zephyr Anderson will be sufficient on delivery thereof to convey to the State of Ohio a fee simple title in and to the above described