

as "or" under the circumstances here under consideration, but on the contrary, I think the sense precludes such a reading.

In the last analysis, the purpose of the fish and game laws is to conserve the wild life of the state. The practice of pursuing fox with dogs when the fox are not killed or injured and when there is no intent to kill or injure such animals, but rather to take the best of care of them as in the case of the average riding club which engages in this pastime, is not detrimental to the conservation of the wild life of Ohio, but is, on the contrary, a practice in pursuance of that policy.

It is, accordingly, my opinion that fox may be pursued with dogs at any time, providing there is no intent to kill or injure such animals and further providing that such animals are not in fact killed or injured.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4201.

ADJUTANT GENERAL—CONSTRUCTION AND MAINTENANCE OF
SIDETRACKS BY RAILROAD ON STATE PROPERTY—MAY NOT
AGREE TO INDEMNIFY SUCH COMPANY FROM DAMAGE CLAIMS.

SYLLABUS:

The Adjutant General of Ohio is without authority to enter into a sidetrack agreement with a railroad company, on behalf of the State of Ohio, wherein it is provided that the state shall indemnify the railroad company and save it harmless from all loss or damage to persons or property resulting from the construction or maintenance of such sidetracks on state property.

COLUMBUS, OHIO, March 29, 1932.

HON. F. D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"The New York Central Railroad, at my request, extended siding facilities at Camp Perry on property owned by the State of Ohio, during the summer of 1931. The enclosed private side track agreement has been submitted by the Company for my signature as Adjutant General. I am informed by the New York Central officials that the agreement submitted is similar to a previous agreement dated July 25, 1916.

In view of certain clauses relative to the responsibility of the State, an opinion is requested as to whether the Adjutant General of Ohio possesses the authority to enter into said agreement."

The Private Side Track Agreement which you have submitted to me in which the New York Central Railroad Company, as one of the parties, is termed the "Railroad," and the State of Ohio, as the other party, is termed the "Industry," contains the following paragraphs:

"The Industry hereby assumes and will bear and pay all loss or damage to property or injury to or death of persons that may be caused by said unloading pit, or by its existence, maintenance or use, whether caused by the negligence of the Railroad, its agents or employes or otherwise, and will indemnify and save the Railroad harmless therefrom and from all consequent cost and expense.

The Industry will indemnify and save the Railroad Company harmless from:

(a) All loss or damages by fire upon premises owned or occupied by the Industry arising from the use and operation of said tracks for the benefit of the Industry, whether caused by the negligence of the Railroad Company or its employes or otherwise, except such as may be caused to the Railroad Company's property solely by its own negligence or that of its employes.

(b) All other loss, damages or injury to persons or property on such premises of the Industry, arising from or growing out of the construction or maintenance of said tracks, or the use and operation thereof for the benefit of the Industry, which is not due to the sole negligence of the Railroad Company or its employes."

The Adjutant General of Ohio has only such powers as are expressly conferred upon him by law and such as are implied from those expressly given.

Section 5219, General Code, provides that the adjutant general shall have general direction over the state arsenal, state camp grounds, and other military property of the state.

Section 5220, General Code, reads as follows:

"The adjutant general shall be the custodian of the state rifle range and military camp ground."

Section 5221, General Code, provides that he may make changes and improvements in reference to said property.

The power of management and control of Camp Perry which is conferred by law upon the adjutant general does not, in my opinion, give him authority to bind the state to indemnify one against his own act which may result in damage to another. The carrying of casualty and indemnity risks for individuals or corporations being beyond the power of the adjutant general, the signing of such agreement would have no binding effect upon the state.

As stated in 36 Cyc. 873:

"Public officers have and can exercise only such powers as are conferred upon them by law, and a state is not bound by contracts made in its behalf by its officers or agents without previous authority conferred by the state or the constitution, unless such unauthorized contracts have been afterward ratified by the Legislature."

Similar agreements have been disapproved by this office. See Opinions of the Attorney General for 1928, Vol. II, page 911, Vol. III, page 2028, and Vol. IV, page 2698.

I am of the opinion, therefore, that the Adjutant General of Ohio is without authority to enter into a sidetrack agreement with a railroad company, on

behalf of the State of Ohio, wherein it is provided that the state shall indemnify the railroad company and save it harmless from all loss or damage to persons or property resulting from the construction or maintenance of such sidetracks on state property.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4202:

APPROVAL, NOTES OF YORK TOWNSHIP RURAL SCHOOL DISTRICT,
 ATHENS COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, March 29, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4203.

OHIO RIVER—LOW WATER MARK ON NORTH SHORE OF RIVER IS
 SOUTHERN BOUNDARY OF OHIO—JURISDICTION TO ENFORCE
 FISH AND GAME LAWS ON OHIO RIVER.

SYLLABUS:

1. *The low water mark on the north shore of the Ohio River remains the southern boundary of the State of Ohio, though such low water mark may have varied from time to time through the gradual processes of accretion and reliction. Where, however, such low water mark has been caused to shift by artificial means, as by the construction of locks and dams, the southern boundary of the state would not change, but would remain where the low water mark was prior to such construction.*

2. *The officers of the states on both sides of the Ohio River, for the practical purposes of enforcing their fish and game laws, may fix an arbitrary line on the river and agree among themselves that they will not enforce the laws of their respective states in the territory on the opposite side of this line. Such agreement, however, would have no binding effect upon said states for the reason that the fixing of such a line would not change or fix the actual boundaries of such states or affect the concurrent jurisdiction which said states have over said river.*

COLUMBUS, OHIO, March 29, 1932.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows: