

4865.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS AUDITOR OF THE STATE OF OHIO—JOSEPH T. TRACY.

COLUMBUS, OHIO, January 6, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond upon which your name appears as principal and the New Amsterdam Casualty Company appears as surety, in the penal sum of \$20,000.00, conditioned to cover the faithful performance of the duties of the principal as Auditor of the State of Ohio.

Finding said bond legal and proper as to form, I have endorsed my approval thereon and return the same herewith. It should be noted, however, that the oath of such bond has not as yet been acknowledged and the same should be done before it is finally filed in the office of the Secretary of State.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4866.

APPROVAL, BONDS OF ARCANUM VILLAGE SCHOOL DISTRICT, DARKE COUNTY, OHIO, \$6,531.57.

COLUMBUS, OHIO, January 6, 1933.

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

4867.

CONSERVATION COUNCIL—MAY EXPEND FUNDS FOR ARTIFICIAL PROPAGATION OF BOBWHITE OR QUAIL.

SYLLABUS:

The Conservation Council may expend any funds available for the artificial propagation of bobwhite or quail.

COLUMBUS, OHIO, January 6, 1933.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—Your office recently requested my opinion as follows:

“As it is our desire to assist nature by artificially propagating the Ohio quail or bobwhite, I would appreciate an early opinion from you as to whether or not this division has authority to propagate Ohio quail.

Your attention is called especially to the following sections: 1390, 1408, 1433, 1438-1.”

Section 1390, General Code, to which you refer, contains definitions of the words and phrases used in the act and provides that game be construed as meaning both quadrupeds and game birds. It also groups quail or bobwhite under the heading of non-game birds and not under the heading game birds.

Section 1408, General Code, prohibits the catching, killing, or the disturbing or destruction of eggs, nests, or young of other than game birds, but does not refer to the power of the Conservation Council to artificially propagate such non-game birds.

Section 1433, General Code, to which you refer, reads in part as follows:

"At least fifty per cent of the money arising from all such licenses shall be expended by the conservation council for the purchase and propagation of game birds and animals to be used in restocking sections where a scarcity of such birds and game animals exist, for establishing and purchasing or otherwise acquiring title to lands for game preserves, and the conservation council is hereby empowered to organize such lands into state game preserves under rules and regulations to be adopted by said conservation council, and employ on such preserves one or more keepers or protectors at such salary and with such duties, as may be prescribed by the conservation council."

It is obvious from the language of this section that the legislature has recognized the propriety of requiring some portion of the moneys arising from the sale of hunting licenses to be expended for the propagation of game birds and animals, the number of which may, as the result of hunting, become depleted. The money thus allocated for propagation of game can, of course, not be utilized for any other purpose, but the section does not either affirm or deny the right to propagate other birds and animals.

The only section of the Code which seems to be pertinent to your inquiry is section 1438-1, 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 song and insectivorous and game birds, wild animals and fish, except authority to change laws in the General Code, covering commercial fishing in the Lake Erie fishing district, and in such other waters wherein fishing with nets is licensed by law, within the state and in and upon the waters thereof. It shall enforce by proper legal action or proceeding the laws of the state for the protection, preservation and propagation of such birds, animals and havens for the propagation of fish and game, and, so far as funds are provided therefor, shall adopt and carry into effect such measures as it deems necessary in the performance of its duties."

The language of this section is very broad and, while the authority to propagate song and insectivorous birds is at best poorly expressed, I am of the view that the legislature intended by the language used to place broad authority in the Conservation Council in matters of this kind, subject, of course, to funds being available therefor. It is to be noted that the Council is by the statute given "authority and control in all matters pertaining to the protection, preservation and propagation of song and insectivorous and game birds, wild animals and fish." No doubt, it is unusual to couch a grant of authority in such general language, but, so long as the Council exercises the authority thus granted in a reasonable manner, I believe the courts would construe the authority to exist.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that the Conservation Council may expend any funds available for the artificial propagation of bobwhite or quail.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4868.

APPROVAL, BONDS OF WADSWORTH TOWNSHIP RURAL SCHOOL DISTRICT, MEDINA COUNTY, OHIO, \$3,530.00.

COLUMBUS, OHIO, January 6, 1933.

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

4869.

OFFICES COMPATIBLE—PROSECUTING ATTORNEY AND CITY SOLICITOR—MAY BE COMPENSATED IN ACCORDANCE WITH SECTION 4307, G. C.

SYLLABUS:

A prosecuting attorney may be appointed as city solicitor of a city within the county, and, in accordance with the provisions of section 4307, General Code, be compensated in part from the county treasury for his services as prosecuting attorney to the police or mayor's court.

COLUMBUS, OHIO, January 6, 1933.

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

GENTLEMEN:—This will acknowledge receipt of your request for an opinion from this office which reads:

“May the Prosecuting Attorney of a County be appointed as City Solicitor of a City within the County, and be assigned as Prosecuting Attorney to the Police or Mayor's Court in accordance with the provisions of Section 4307 of the General Code, and receive compensation out of the County Treasury for his services in addition to this compensation as Prosecuting Attorney of the County.”

Section 4306, General Code, to which you refer, reads as follows:

“The solicitor shall also be prosecuting attorney of the police or mayor's court. When council allows an assistant or assistants to the solicitor, he may designate an assistant or assistants to act as prosecuting attorney or attorneys of the police or mayor's court. The person thus designated shall be subject to the approval of the city council.”