

257.

FISH—DISPOSITION OF SEVERAL KINDS BY PURCHASE, SALE, BAR-  
TER OR GIFT PROHIBITED—SECTION 1412 (d), GENERAL CODE,  
CONSTRUED.

SYLLABUS:

*Section 1412 (d) of the General Code of Ohio prohibits the purchase, sale or offering for sale, bartering, giving away or having in possession for such purpose any black bass, rock bass, calico or strawberry bass, crappie, blue gill or sunfish, caught in the Lake Erie fishing district of the State of Ohio, or in the inland fishing district of the State of Ohio, or outside of the State of Ohio.*

COLUMBUS, OHIO, April 3, 1929.

HON. JOHN W. THOMPSON, *Chief Division of Fish and Game, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of March 13, 1929, with copy of letter sent to you by Mr. W. H. Burtner, Jr., Chairman Law Enforcement Committee, Cincinnati, Ohio, enclosed. You request, at Mr. Burtner's instance, an opinion from this department with reference to an interpretation of paragraph d of Section 1412, General Code, the pertinent portion of his letter being as follows:

"D. No person \* \* \* shall sell \* \* \* any fish caught in inland fishing district of this state, except carp \* \* \* or any black bass \* \* \* caught in the Lake Erie fishing district of this state \* \* \* .

Would this reading of the statute allow the sale of black bass, etc., from Lake Erie fishing districts and all states where it is lawful to catch them?

Would this reading allow three licensed fishermen in open season in the inland district to catch in two days seventy-two black bass and give all the fish to one to sell in Ohio, or to repeat each day the sale of thirty-six bass in the State of Ohio caught in inland district?"

Paragraph d of Section 1412 of the General Code of Ohio reads as follows:

"d. Sale. No person, firm or corporation, shall buy, sell or offer for sale, barter, give away, or have in possession for any such purpose any fish caught in the inland fishing district of this state, except carp, sheephead, mullet and grass pike, or any black bass, rock bass, calico or strawberry bass, crappie, blue gill or sunfish caught in the Lake Erie fishing district of this state, or outside of the state or have in possession any such fish unlawfully caught, and each fish so bought, sold, offered for sale, exposed for sale, bartered or given away, had in possession unlawfully caught, or for the purpose of sale, or of a less length than herein required shall constitute a separate offense."

It is a cardinal rule of statutory construction that the words of a statute are, to be construed with reference to its subject matter and with reference to the object intended to be accomplished by the Legislature in its enactment. Section 1412 (d) of the General Code is a part of the fish and game act which was passed by the Legislature of Ohio for the purpose of protecting and preserving the fish and game of

Ohio. In order to interpret the meaning of paragraph d of Section 1412, and to understand the legislative intent, it is well to consider the other portions of the act.

Section 1411 of the General Code defines inland and Lake Erie Fishing district. Paragraph a, Section 1412, of the General Code, is as follows :

“Open season. In the inland fishing district of the state black bass may be taken and possessed by angling only from the sixteenth day of June to the thirtieth day of April, both inclusive, and in the Lake Erie fishing district they may be thus taken and possessed only from the fifteenth day of July to the twenty-fourth day of May, both inclusive.”

Paragraph b, Section 1412, is as follows :

“Method of taking. Black bass, less than eleven inches in length, calico or strawberry bass and crappie less than six inches in length, rock bass and blue gills less than five inches in length may not be taken in either of the fishing districts of this state; but if any of the fish named in this section are caught unintentionally in any net or with hook and line and are released alive in such manner as not to injure them, such taking shall not be considered an offense.”

Paragraph c, Section 1412, is as follows :

“Limit. A person shall not take in any one day to exceed twelve black bass, twenty-five rock bass or blue gills, or forty calico or strawberry bass or crappie, nor have in possession at any time more than two days' legal catch of any of the above named varieties.”

It will be observed from reading the paragraphs above quoted that the Legislature intended particularly to protect and preserve black bass, calico or strawberry bass or crappie, for the Legislature limited the time during which black bass, strawberry or calico bass or crappie could be caught, limiting the number that one person should take and fixing the minimum size. Paragraph d was enacted for the purpose of preventing the defeat of the other sections of this act by persons who sought to violate them. It is hardly conceivable that the Legislature would except from the operation of paragraph d the very fish that it purposed to preserve and protect by this act.

In reviewing the history of this act, it appears that the act as originally passed in 1904 and the amendments to the act passed in 1908 clearly and unmistakably prohibits the sale of black bass. Section 23 of the original act, passed in 1904, 97 O. L. 475, reads as follows :

“No person shall buy, sell, offer or expose for sale, barter or give away, or have in his possession for the purpose of sale, any black bass that has been caught in any of the rivers, creeks or reservoirs of the state, or in Buckeye Lake or Indian Lake, or in the waters of any other state or country, nor buy, sell, offer for sale, or have in his possession, any fish, caught in such waters out of season or in a manner prohibited; \* \* \* ”

Section 42 of the act, as amended in 1908, 99 O. L. 273, reads as follows :

“No person, firm or corporation shall sell, offer for sale, barter, give away or have in possession for any such purpose, ship or transport out of the

state a black bass whether caught in either of the fishing districts of the state or caught outside of the state. Each black bass so bought, sold, offered or exposed for sale, bartered, given away or had in possession or unlawfully caught shall constitute a separate offense."

It appears to me that the intention of the Legislature to prohibit the sale of black bass is clear and manifest. Applying the rule of statutory construction, if the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to that purpose.

It may be urged that this being a penal statute it should be strictly construed. While penal statutes are to be construed strictly so as not to be extended beyond their terms, they are also to be construed fairly in accordance with expressed legislative intent.

Therefore, I am of the opinion that a fair construction of Section 1412 (d) of the General Code of Ohio prohibits the purchase, sale or offering for sale, bartering, giving away or having in possession for such purpose any black bass, rock bass, calico or strawberry bass, crappie, blue gill or sunfish caught in the Lake Erie fishing district of the State of Ohio or in the inland fishing district of Ohio, or outside of the State of Ohio. Since Section 1412 (d) of the General Code of Ohio prohibits the possession of black bass for the purpose of sale, the facts set forth in your second question necessarily constitute a violation of that section.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

258.

ENGINEER—EMPLOYED BY VILLAGE UNDER CONTRACT—QUESTION OF FACT WHETHER SUCH ENGINEER IS AN OFFICIAL—EMPLOYMENT OF A FIRM DISCUSSED.

*SYLLABUS:*

1. *Whether or not one employed to perform engineering services for a village is an official depends upon the nature of the resolution fixing his employment and the character of the duties which he is to perform. In other words, it is a question of fact to be determined from all of the circumstances.*

2. *A firm of engineers may not be employed in such a manner that the individual members of the firm will be regarded as village officers. Section 4364 contemplates the employment of but one engineer as an official and it follows that a number of engineers could not be employed under the provisions of the section. However, in the event the council contracts with a firm to furnish certain engineering services, as distinguished from the supervisory duties of the official engineer, or the street commissioner, such action is within its powers.*

COLUMBUS, OHIO, April 3, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads as follows: