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QUAIL AND GROUSE—LEGALLY RAISED AND COMMERCIAL-
LY SLAUGHTERED IN ANOTHER STATE—IDENTIFI-
ABLE—MAY BE LAWFULLY SOLD IN OHIO.

SYLLABUS:

Quail and grouse legally raised and commercially slaughtered in another state, and identifiable as such, may be lawfully sold in Ohio.

Columbus, Ohio, May 7, 1953

Charles A. Dambach, Chief, Division of Wildlife
Department of Natural Resources
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting my opinion as follows:

“The question has arisen concerning the interpretation of Sub-Section D of Section 1396 of the Ohio General Code and Section 1390 of the General Code relative to the sale of quail and grouse in Ohio which have been legally raised in another state and legally acquired from that state. Accordingly your opinion is requested as to whether or not it is legal to market such birds in this state.”

Sub-section d, Section 1396, General Code, provides:

“d. No person within the state shall buy, sell, expose for sale, offer for sale or have in possession for any such purpose any of the fish, or any part thereof, mentioned in this section whether taken within or without the state, except such fish as are protected by law and taken by licensed commercial fishermen in the Lake Erie fishing district and in other waters wherein fishing with nets is licensed by law. Nothing in this section shall prohibit the sale of fish taken by angling in the Lake Erie fishing district which are of a length provided by law and permitted to be taken and sold by licensed commercial fishermen. No person within the state shall buy, sell, expose for sale, offer for sale or have in possession for any such purpose any game bird or game quadruped, or any part thereof, whether taken within or without the state. Each such fish, game bird or game quadruped or part thereof, bought, sold, exposed for sale, offered for sale or had in

possession for any such purposes, contrary to the provisions of this section or council order then in effect shall constitute a separate offense."

From a reading of the provisions of this subsection it will be seen that the sale of game birds or game quadrupeds, whether "taken" within or without the state, is prohibited in Ohio. There can be no question but that quail and grouse are game birds as this term is defined in Section 1390, General Code, and the only question presented is whether these birds raised commercially in another state, according to the laws of such state, are game birds "taken" in such state within the meaning of the sub-section quoted above. In this regard it is necessary to consider the definition of the word "take" or "taking" as defined in Section 1390, General Code. It is provided therein:

"Words and phrases as used in this chapter shall be construed as follows: * * *

"Take or taking: Includes pursuing, shooting, hunting, killing, trapping, angling, fishing with a trot line, or netting any clam, mussel, crayfish, aquatic insect, fish, frog, turtle, wild bird or wild quadruped, and any lesser act, such as wounding, or placing, setting, drawing, or using any other device for killing or capturing any such wild animal, whether it results in such killing or capturing or not; includes also every attempt to kill or capture and every act of assistance to any other person in killing or capturing or attempting to kill or capture any such wild animal."

As defined in this section the word "take" or "taking" would seem to have reference only to the seizure or slaying, in any manner, of animals living in a wild state. While the word "killing" if used unrestrictedly is of broad import and could conceivably embrace the butchering of commercially raised quail and grouse its use in Section 1390, General Code, would seem to be qualified by the words preceding and following it and limited, accordingly, to acts of slaying animals found in an unrestrained or wild state. This qualification by association, whereby a word of general reasoning is limited by special or qualified words with which it is grouped, is a rule of interpretation finding expression in the maxim "noscitur a sociis." The application of this rule is discussed in Horack's Sutherland Statutory Construction, Vol. 2, at page 393, as follows:

"In case the legislative intent is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases. Thus, when two or

more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word. But this is so, only if the result is consistent with the legislative intent, for the maxim 'noscitur a sociis' is a mere guide to legislative intent. The rule will not be applied where there is 'no ambiguity' or to thwart the legislative intent, or to make general words meaningless. * * *

"As the Supreme Court of the United States has said, 'These rules are not masters of the courts but merely their servants to aid in ascertaining the legislative intent. They afford a mere suggestion to the judicial mind that where it clearly appears that the lawmakers were thinking of a particular class of persons or objects their words of general description may not have been intended to embrace any other than those within the class.'"

As stated by the author of this quotation the rule represented by this maxim is merely a guide to a determination of the intent of the legislature and a purely formalistic application of the rule is to be avoided. Its application in this instance, however, is in my opinion consistent with the legislative purpose behind the enactment of the fish and game laws as a whole.

Section 1390 et seq., General Code, was enacted to protect, preserve and promote animal and aquatic life within the state of Ohio. That prohibition, contained in sub-section d, Section 1396, General Code, on the sale in Ohio of game birds and quadrupeds taken without the state would appear to be a measure designed to forestall the poaching of Ohio game and its sale under the guise that it was taken in another state. This threat is largely eliminated, however, in the situation here considered and similar instances where game birds or quadrupeds are commercially raised in another state. While your letter is silent on this point it would seem likely that these commercially raised birds are butchered, dressed and packaged out of state and stamped or marked accordingly. No problem of identity would arise in such case. If these birds are not so marked or identified the wild life council could promulgate a rule requiring that they be stamped in a manner which would clearly indicate their origin. Authority for such an order can be found in Section 1438-1, General Code. It is provided in pertinent part therein:

"* * * The wild life council shall have authority to regulate * * *

"(c) Buying, selling, offering for sale or exposing for sale any such animal or part thereof."

The question presented by your letter is similar to the question considered by my immediate predecessor in office in Informal Opinion No. 129, for 1950. That question concerned the legality of selling, in Ohio, rabbits or hares imported from Australia. It was concluded that such sales were lawful. In the body of the opinion at page 511, it was stated:

“* * * It is clearly evident also that the construction of Sections 1391 and 1396, General Code, in a way which would forbid the importation into Ohio of a food product consisting of the flesh of wild rabbits taken in Australia would in no wise promote the purpose of the Conservation Act nor accord with the conservation policy of the state of Ohio. Such interpretation would do nothing whatever ‘to guarantee a future supply for such wild animals and to provide for their present use and development for public recreation and *food supply*.’ Indeed, such interpretation would have the opposite effect with respect to the food supply available to the public. It would deny to the people of Ohio a source of inexpensive meat products which, in view of current prices of domestic meats, would probably be greatly welcomed in this state, especially by citizens in the lower income groups. * * *

“It is true that the statute forbids sale or possession in Ohio of hare or rabbits, out of season, which have been taken ‘within or without the state.’ This is apparently a measure designed to aid in enforcement of the law based on a notion that the identity of game taken in Ohio could only with great difficulty be distinguished from that taken in a neighboring state. It is clear that no such problem of identification would exist with respect to the Australian rabbit products since they are individually packaged and so stamped as to indicate their origin.”

I am in accord with the conclusion reached in the above opinion and think the reasoning upon which it was based applicable, in part at least, to the present case.

Based upon the foregoing considerations and in specific answer to your question, I am of the opinion that quail and grouse legally raised and commercially slaughtered in another state, and identifiable as such, may be lawfully sold in Ohio.

Respectfully,

C. WILLIAM O'NEILL

Attorney General