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GAME PROTECTORS—SPECIALLY APPOINTED POLICE OFFICERS—APPOINTED IN PURSUANCE OF LAW—PERMITTED TO BEAR ARMS WHILE IN PERFORMANCE OF DUTY—MUST GIVE BOND PROVIDED BY LAW TO STATE OF OHIO.

SYLLABUS:

Game protectors are specially appointed police officers who are appointed in pursuance of law and are therefore permitted to bear arms while in the performance of their duty, provided they have first given bond to the State of Ohio as provided by law.

Columbus, Ohio, July 26, 1950

Mr. A. W. Marion, Director, Department of Natural Resources  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There is some confusion in our minds as to whether or not the game protectors of the Department of Natural Resources, Division of Wild Life, can legally bear arms while in the performance of their duties as law enforcement officers of this Division. We would therefore appreciate your formal opinion on this matter.”

In order to answer your question, your attention is invited to Section 12819, General Code, which deals with concealed weapons and the right to carry same. Such section reads as follows:

“Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined

not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G. C. 12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by sections 2833, 4373, 10070, 10108 and 12857, of the General Code to go armed when on duty. *Provided further, that it shall be lawful for deputy sheriffs and special appointed police officers, except as are appointed or called into service by virtue of the authority of said sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the state of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond.*" (Emphasis mine.)

If game protectors have the authority to carry concealed weapons, this authority must be found in the above section, for neither the statute creating their office nor any other specific statute gives them this authority.

The Department of Natural Resources, Division of Wild Life is charged with the preservation and the enforcement of all laws protecting birds, fish and game. See Sections 1438-1 and 1438-2f, General Code. It therefore follows that this department being in the nature of a police department, the officers thereof appointed in pursuance of law are "specially appointed police officers" within the meaning of Section 12819, General Code.

That it was the intention of the General Assembly that game protectors should be treated as "specially appointed police officers" within the meaning of Section 12819, General Code, and as such protected in the carrying of concealed weapons is evident from the following statutes relating to their office.

Section 1441, General Code, reads in part as follows:

"The law enforcement officers of the division of wild life shall be known as game protectors. \* \* \* (They) shall enforce all laws pertaining to the taking, possession, protection, preservation, management and propagation of wild animals. \* \* \* They shall have authority to make arrests on view and without issuance of a warrant therefor. \* \* \*

Such game protector, sheriff, deputy sheriff, constable or officer having a similar authority, may search any place which he has good reason to believe contains a wild animal or any part thereof, taken or had in possession contrary to law or wild life council order then in effect, \* \* \* If the owner or person in charge of the place to be searched refuses to permit such search, upon filing an affidavit in accordance with law with a court having jurisdiction of the offense, and upon receiving a search warrant issued thereon, such officer or game protector may forcibly search the place described \* \* \*.”

(Parenthesis, the writer's.)

Section 1442, General Code, reads in part as follows:

“The chief of the division of wild life or any game protector shall have the same authority as sheriffs to require aid in executing a process or making an arrest. \* \* \*”

Section 1444, General Code, reads in part as follows:

“Sheriffs, deputy sheriffs, constables and other police officers shall enforce the laws and the orders of the wild life council. \* \* \*”

It is thus apparent that the General Assembly intended that game protectors should be regarded as specially appointed police officers, and therefore should be permitted to go armed while on duty.

Your attention is further invited to 1915 Opinions of the Attorney General, Vol. 2, page 1900, which held that deputy game wardens were “specially appointed police officers”, and could therefore carry concealed weapons upon giving the required bond. It should be noted further that game protectors, under present law, perform duties formerly incumbent upon deputy game wardens to perform.

It is therefore my opinion that game protectors are specially appointed police officers who are appointed in pursuance of law and are therefore permitted to bear arms while in the performance of their duty, provided they have first given bond to the State of Ohio as provided by law.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.