

the language of the above statute and the purpose of the amendment clearly in mind, it would follow that the number of appraisals is immaterial. The appraiser receives a sum not to exceed five dollars per *day* and expenses, unless the court fixes his compensation at a greater amount in accordance with the latter provisions of section 3006, General Code.

Your second question relates to where the appraiser is called on the same day to make appraisals in different and unrelated proceedings on execution. You inquire whether the appraiser may be paid five dollars for each proceeding. The language of section 3006 clearly fixes the compensation on a per diem basis. It would seem to follow that the question of unrelated appraisals is immaterial.

An examination of the history of Amended Senate Bill No. 243 (section 3006, General Code) supports the conclusion herein reached. The pertinent part of section 3006, General Code, as originally introduced, provided in line ten of the bill as follows: "not to exceed five dollars per day and necessary expenses." The Ohio Senate Journal for the regular session of the 90th General Assembly at page 401 shows the following amendment: "Line 10, strike out 'day' and insert 'parcel.'" This particular line of Amended Senate Bill No. 243 was amended by the House of Representatives to read as it was originally enacted. In the Senate Journal at page 735 the following appears: "That the Senate and House of Representatives agree to the following amendments: In line 10, strike out 'parcel' and insert 'day.'" In the Ohio House Journal for the regular session of the 90th General Assembly, the following appears at page 1069: "That the Senate recede from its disagreement to the following amendments and agree to the same, \* \* \* strike out 'parcel' and insert 'day.'" These amendments would tend to show that the legislature intended that appraisers in these cases should be paid on a per diem basis and not on a "parcel" or "proceeding" basis.

Without further extending this discussion, it is my opinion in specific answer to your questions:

1. Where a proceeding under execution involves more than one appraisal, the appraiser is entitled to a sum not to exceed five dollars per day and his necessary expenses, unless the court fixes his compensation at a greater amount in accordance with the proviso in section 3006, General Code.

2. In the event that the same appraiser is called upon by the sheriff on the same day to make appraisals in different and unrelated proceedings on execution, such appraiser should not be paid on the basis of the number of appraisals made but should receive a sum not to exceed five dollars per day and his necessary expenses, unless the court fixes his compensation at a greater amount in accordance with the proviso in section 3006, General Code.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

3320.

#### RACCOON—DEFINITION OF RACCOON DEN.

##### SYLLABUS:

*A raccoon's den is any cave or hollow, a hollow tree or stump, a tile drain, culvert, catch basin or any other place of concealment in which a raccoon lodges or where it may seek refuge when pursued by a hunter*

COLUMBUS, OHIO, October 19, 1934.

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

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“The question has recently been brought before me: ‘What constitutes a “raccoon den” as is mentioned in Section 1398-A, General Code of Ohio?’

Where den trees are scarce raccoon will often use old and not used drain tile in ditches and culverts as a place of concealment and at times as a breeding place and therefore should be classed as a den in the sense used in Section 1398-A, above quoted.

However, some magistrates’ courts have not classed such tiles as bona fide dens and we have lost several cases thereby.

I therefore request an opinion on this important matter as a large number of raccoon are taken from such tiles or hollow logs. Due to the early opening of the raccoon season, an early opinion will be appreciated.”

Section 1398-a reads in part as follows:

“Provided that no person shall catch, kill, injure or pursue, with such intent a raccoon, except from 6 o’clock p. m. to 6 o’clock a. m., and except at field trials, and be it further provided that at no time shall a raccoon be taken from its den.”

Section 1438-1, defining the powers and duties of the Conservation Council, provides that it shall enforce by proper legal action or proceeding the laws of the state for the protection, preservation and propagation of birds, animals and havens for the propagation of fish and game. The Legislature of Ohio in the enactment of the fish and game laws has regulated the manner of taking game birds, game and fur-bearing animals, has provided for a further closed season on game or animals which the Conservation Council thinks are about to be depleted or become extinct, and has authorized the creation of state game refuges by the Conservation Council and the acquisition of land for such purpose. Provision has also been made for the appointment by the Conservation Council of such number of fish and game protectors as the Council may prescribe. Furthermore, the Legislature has seen fit to limit the number of game birds, quadrupeds and fur-bearing animals to be taken in a day or over a certain period of time, and penalties for violation of any of the provisions of the Fish and Game laws are set out.

All in all, in reading these statutes one must be impressed with their comprehensiveness and rigor and conclude that said statutes were framed with reference to the protection of game and fur-bearing animals from indiscriminate and unreasonable killing and the obvious purpose of such statutes was to prevent extermination and undue depletion.

From a study of the habits and characteristics of raccoon, it appears that these animals lodge and rear their young in hollow trees, hollow logs, tile drains,

culverts, ditches, etc., and that when pursued by hunters oftentimes seek refuge in such places.

A den is defined in Webster's New International Dictionary as being a "lair or resort of a wild beast, a place of resort or concealment, the resting or hiding place of a wild animal."

The clear and apparent language of the statute and the thoroughness of the legislation designed for the protection of game and fur-bearing animals impels the conclusion that it was the manifest intention of the Legislature that raccoon should be taken at no place other than in the open.

Therefore, in specific answer to your question, I am of the opinion that a raccoon's den is any cave or hollow, a hollow tree or stump, a tile drain, culvert, catch basin or any other place of concealment in which a raccoon lodges or where it may seek refuge when pursued by a hunter.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

3321.

JUSTICE OF PEACE—MAY APPOINT FATHER AS TOWNSHIP TRUSTEE TO FILL VACANCY WHEN.

*SYLLABUS:*

*A justice of the peace having the oldest commission in a township may legally appoint his father as township trustee to fill the vacancy in such office created by the resignation of a township trustee, providing his father is a person capable of transacting the duties of township trustee and possesses the qualifications of an elector in the township.*

COLUMBUS, OHIO, October 20, 1934.

HON. CHARLES W. LYNCH, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"The township trustees for Adams Township have presented the following question, upon which they have requested your opinion. The question is as follows:

'A vacancy occurred by the resignation of one of the trustees in Adams Township. The Justice of the Peace holding the oldest commission appointed his father as trustee to fill the vacancy. General Code 3262 states, in substance, that the oldest Justice of the Peace shall appoint a suitable person or persons, having the qualifications of electors in the township, to fill such vacancy or vacancies for the unexpired term.'

I have advised the township trustees that in my opinion the appointment is legal. However, they request your opinion in the matter."

Section 3262, General Code, mentioned in your communication, reads as follows:

"When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township