

being made by authority of other statutes, and when such clothing is furnished the cost thereof should be charged against the county where the insane person committed has a legal residence.

Second, when a commitment is made to a state hospital by authority of Section 1950-1, General Code, the fees of the Probate Court making such commitment, and the other expenses incident to such commitment, including the cost of furnishing clothing in accordance with Section 1962, General Code, should be paid in the first instance from the county treasury of the county from which the commitment is made, upon the certificate of the probate judge and the same should be charged to the county where the person committed has a legal residence. Collection thereof should be made by the fiscal officer of the county from whose treasury such fees and expenses are paid.

Respectfully,

GILBERT BETTMAN,
Attorney General.

968.

CONSERVATION COUNCIL—PROCEDURE NECESSARY FOR CONSERVATION DIVISION TO FUNCTION.

SYLLABUS:

Discussion of steps necessary to the functioning of the Conservation Council and the Division of Conservation.

COLUMBUS, OHIO, October 2, 1929.

HON. CHARLES H. LEWIS, *Chairman, Conservation Council, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your communication, as follows:

“This is to advise you that on Monday, September 23, 1929, Messrs. N. E. Shaw, I. S. Myers, Walter F. Kirk, Charles Lay, A. F. Moon, Charles H. Lewis and Edmund Secrest, all of whom Governor Myers Y. Cooper has appointed as members of the Conservation Council under amended Senate Bill No. 131, passed at the last session of the General Assembly of Ohio, met in the office of Governor Cooper, took the oath of office, and organized by electing Mr. Charles H. Lewis as Chairman, and Mr. N. E. Shaw, as temporary Secretary.

Mr. Joseph E. Pfeuger, who was also appointed a member of the State Conservation Council by Governor Cooper, was not present at the meeting.

Pursuant to said act of the General Assembly, said Council also unanimously adopted a resolution recommending to the Director of Agriculture the appointment of Mr. John W. Thompson as Conservation Commissioner.

Thereupon, a motion was adopted that the Attorney General of Ohio be requested to advise the Council as to the manner in which it is required by the law to proceed further with the exercise of its functions and powers.

Will you, therefore, kindly advise the Council as to its powers and duties and as to the manner in which it is required by law to proceed further in the performance of its functions and duties?”

Your inquiry is so general in its terms that it would be impossible, within the confines of an opinion, to cover all of its phases. I gather, however, what you have

particularly in mind is the procedure necessary in order that the Conservation Council and the Division of Conservation may function as a branch of the Executive Department of the state government.

Provision for the establishment of the Conservation Council is incorporated in Amended Senate Bill No. 131, of the 88th General Assembly, entitled "AN ACT To create a department of conservation, determine the powers and duties thereof, to transfer certain functions of the Department of Public Works to the Department of Conservation and to abolish the Division of Fish and Game of the Department of Agriculture and transfer the functions thereof to the Department of Conservation; * * * ."

It may be suggested at the outset that the title of the act is not strictly accurate, for the reason that it refers to a "Department of Conservation", whereas the act itself does not purport to create a separate department of government, but establishes "the Division of Conservation" as a part of the Department of Agriculture. Otherwise, the title clearly sets forth the intent and purpose of the bill itself.

In accomplishing the end in view, the various sections of the General Code dealing with reservoir lands dedicated for public parks and pleasure resorts and matters pertaining to fish and game, have been amended so as to confer the administrative powers with relation thereto, theretofore, existing in the Department of Public Works and the Division of Fish and Game, respectively, upon the conservation council and the conservation commissioner. Further provisions of the bill relate to the procedure incident to the establishment of the conservation council and the selection of the conservation commissioner. These are the sections more immediately applicable to the question here under consideration.

Section 1438 of the General Code, as amended by the last General Assembly in the bill hereinabove referred to, reads as follows:

"The Governor with the advice and consent of the Senate, shall appoint eight competent citizens of this State to be and act as a Conservation Council of Ohio. Immediately upon the going into effect of this act, the Governor shall appoint two members whose terms shall expire on the first day of February, 1930; two members whose terms shall expire on the first day of February, 1931; two members whose terms shall expire on the first day of February, 1932; and two members whose terms shall expire on the first day of February, 1933; and thereafter two members shall be appointed each year for terms of four years each. Not more than four of the said eight members shall be affiliated with the same political party. The Governor may remove any member of such council for cause or on the written recommendation of a majority of the members of such council."

From your communication it is apparent that the Governor has complied with the mandate of this section by making recess appointments of the personnel of the council. The mere appointment and organization of the council does not, however, vest it with authority to exercise its powers. This is made clear by the language of Section 1438-3 of the Code, which section is as follows:

"As soon as possible after the taking effect of this act the Conservation Council shall organize and shall recommend to the Director of Agriculture a conservation commissioner who shall be appointed by such director if acceptable to him. Upon the delivery to the office of the Governor of a written notice by said council that it has organized, that the Director of Agriculture has appointed the Conservation Commissioner and that he has accepted and qualified as such, and that it is ready to assume its duties and exercise its

powers, all the powers and duties now vested by law in the Fish and Game Division of the Department of Agriculture, or in the chief of said division or any officer thereof, and all powers and duties in regard to fish and game now vested in the Director of Agriculture or the Department of Agriculture, shall be transferred to and vest in the Division of Conservation; and the Division of Fish and Game of the Department of Agriculture and the offices of chief and assistant chief and all other offices of said division shall be abolished and cease to exist from and after the time of said delivery of said notice. At said time all records and papers of the Division of Fish and Game, all supplies, offices, leases, rights and property, belonging to or in the custody of the Department of Public Works for the supervision, maintenance and improvement of the state reservoir parks, pertaining to and necessary for the administration of the powers and duties herein transferred to the Division of Conservation shall be transferred to and shall be in custody of and under the control of the Division of Conservation.

The unexpended balances of the appropriations of the Division of Fish and Game in the Department of Agriculture and unexpended balances of the appropriations of the Division of Public Works for service, improvement or maintenance of state reservoir parks transferred to the Division of Conservation are appropriated to and made available to the Division of Conservation hereby created.

Every officer and employee of the Fish and Game Division of the Department of Agriculture and every officer and employee of the Department of Public Works whose duty is herein transferred to the Division of Conservation and are under the state civil service laws at the time this act goes into effect shall be assigned to a position in the Division of Conservation of the same standing, classification, grade and privileges, as the position each had in the Division of Fish and Game or Department of Public Works under the civil service laws and so far as possible to duties equivalent to those of his former office or employment. Nothing in this section shall be construed, however, to require the retention of more employees than are necessary to the proper performance of the functions of the Division of Conservation."

Pertinent also are the provisions of Section 1439 of the General Code, as follows:

"For the purpose of carrying into effect the provisions of this chapter there shall be appointed by the Director of Agriculture a commissioner as heretofore provided for. The conservation commissioner shall act as secretary to the conservation council. The conservation commissioner shall appoint a Lake Erie supervising protector and such number of fish and game protectors and special fish and game protectors as the Conservation Council may prescribe. The Lake Erie supervising protector and each fish and game protector shall hold his office for a term of two years, unless sooner removed by the conservation commissioner. Each special fish and game protector shall have the same powers and perform the same duties as a fish and game protector."

A careful reading of these sections makes clear the steps necessary to the legal functioning of the council and the Division of Conservation as a part of the state government. For the purpose of clarity, it may be well to enumerate these steps in chronological order, as follows:

1. Appointment of the members of council by the governor. (G. C. 1438

requires immediate appointment and, since the act became effective after adjournment of the Legislature, a reasonable construction requires appointment to be made immediately, subject to later confirmation upon convening of the senate.)

2. Members of the council shall take the oath of office. (G. C. Sec. 2).

3. The council shall organize and recommend to the Director of Agriculture a conservation commissioner.

4. If the recommendation of the council is acceptable to the Director of Agriculture, he shall appoint the conservation commissioner.

5. The conservation commissioner shall qualify by acceptance, taking the oath of office and giving bond, conditioned according to law, with security to be approved by the Governor in such penal sum as shall be fixed by the Governor, not less in any case than ten thousand dollars. (G. C. Sec. 154-14.)

6. The Director of Agriculture shall certify to the council that the conservation commissioner has been appointed and that he has accepted and qualified as such.

7. The Conservation Council shall deliver written notice to the office of the Governor that it has organized, that the Director of Agriculture has appointed the conservation commissioner and that he has accepted and qualified as such and that it is ready to assume its duties and exercise its powers.

When the steps enumerated have been taken, Section 1438-3, supra, provides that the functions therein enumerated, formerly vested by law in the Fish and Game Division of the Department of Agriculture and the Department of Public Works, shall be transferred to and be under the control of the Division of Conservation. The section further provides that all books, records, etc., pertaining to these functions, shall be transferred to such division.

From your communication it appears that the first three steps enumerated above have already been taken. Accordingly, before the council and the Division of Conservation become vested with the powers conferred by the bill in question, it will be necessary to complete the series of steps.

There are, of course, many matters relating to the powers and functions of the council which I have not touched upon. Doubt may exist in your mind with respect to certain of the duties of the council, but, in the absence of a specific inquiry in regard thereto, I am unable to anticipate what questions may exist. If you will submit any further questions which you have to me, I will be very glad to give consideration thereto and furnish my opinion thereon. In view of the general character of your inquiry, however, no more specific answer can be given than that hereinabove set forth.

Respectfully,

GILBERT BETTMAN,
Attorney General.

969.

CRABBE ACT VIOLATOR—FIRST OFFENSE—JURY TRIAL IN COMMON
PLEAS OR PROBATE COURTS DENIED.

SYLLABUS:

Under the terms of the new Code of Criminal Procedure, passed by the 88th General Assembly, which became effective July 21, 1929, a person charged with a first offense under Sections 6212-13 to 6212-20 of the General Code, commonly known as