

imposed upon it, it would seem clear that it is in the power of your board to require certification of the attendance at or graduation from the school referred to in your letter.

Your second question relates to the power of your board with reference to the revocation of embalmers' licenses.

Section 1343-2 is as follows:

"The state board of embalming examiners may revoke and void a license obtained by fraud or misrepresentation, or if the person named therein uses intoxicants or drugs to such a degree as to render him unfit to practice embalming, or has been convicted of a felony subsequent to the date of his license, such revocation may be vacated, reversed or set aside for good cause shown at the discretion of the board."

That part which is pertinent to your inquiry gives your board power to revoke the license of one who has been convicted of a *felony* after receiving his license.

The offense referred to in your letter was evidently tried in the municipal court and a fine imposed, and it would not appear to have resulted in the conviction for a felony, a part of the punishment of which is death, or imprisonment in the state penitentiary or other penal institutions. This distinguishes a felony from a misdemeanor.

Your second question is, therefore, answered in the negative.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1594.

BUREAU OF FISH AND GAME—PROTECTORS MUST BE TWENTY-ONE YEARS OF AGE.

*The position of fish and game protector, provided for by section 1439 G. C., 108 O. L. Part I, p. 598, is an "office" within the meaning of section 4 of Article XV of the constitution of Ohio. A fish and game protector must, therefore, have all the qualifications of an elector, one of which is that he must be of the age of twenty-one years.*

COLUMBUS, OHIO, September 27, 1920.

HON. A. C. BAXTER, *Chief, Bureau of Fish and Game, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter requesting my opinion on the question, "Is it lawful to appoint a junior fish and game protector?" Inspection of two letters which your department has received, and which accompanied your letter to this office, shows that you are interested in ascertaining whether persons under the age of twenty-one years may legally be appointed fish and game protectors of the state of Ohio.

Your attention is invited to the following section of the constitution of Ohio:

Art. XV, Sec. 4. "No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector \* \*."

Art. V, Sec. 1. "Every white male citizen of the United States, of the age of twenty-one years \* \* \* shall have the qualifications of an elector \* \* \*"

It is clear that if the position of a fish and game protector of the state of Ohio is an *office*, within the meaning of Article XV, section 4 *supra*, your question must receive a negative answer.

Many and various are the definitions of the words "office" and "officer." In *State vs. Hunt*, 84 O. S. 143, 149 this definition of the word "office" is referred to:

"An office is a public position to which a portion of the sovereignty of the country attaches, and which is exercised for the benefit of the public."

In *Theobald vs. State ex rel.*, 10 O. C. C. (n. s.) 175, it is said that an officer, in the sense in which the word is used in the constitution, is an individual who takes the oath of office and becomes responsible to the public for his own official acts and those of his subordinates.

Section 1439 G. C. (108 O. L., Part I, p. 598) provides for the appointment of fish and game protectors in the following words:

"For the purpose of carrying into effect the provisions of the preceding section there shall be appointed a chief of the division of fish and game, and assistant chief, a Lake Erie supervising protector and such number of fish and game protectors and special fish and game protectors as the board of agriculture may prescribe. The chief of the division of fish and game assistant chief, 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 secretary of agriculture. Each special fish and game protector shall have the same powers and perform the same duties as a fish and game protector."

Section 1440 G. C. says:

"Before entering upon the discharge of the duties of his office, the chief of the division of fish and game shall give bond to the state in the sum of two thousand dollars, the assistant chief and the Lake Erie supervising protector in the sum of one thousand dollars, each fish and game protector in the sum of two hundred dollars, with three sureties approved by the secretary of agriculture, conditioned for the faithful discharge of the duties of his office. Such bond, with the approval of the secretary and the oath of office endorsed thereon, shall be deposited with the secretary and kept in his office."

The powers and duties of fish and game protectors are set forth at length in sections 1441 and 1442 G. C. The first sentence of section 1441 G. C. reads thus:

"The chief of the division of fish and game, assistant chief, Lake Erie supervising protector, fish and game protectors and special fish and game protectors shall enforce the provisions of this act and the laws relating to the protection, preservation and propagation of birds, fish, game and fur-bearing animals, and also shall enforce the laws against trespassing on the premises, for the purpose of hunting, without the permission of the owner thereof, and shall have authority to make arrests upon view and without the issuance of a warrant therefor."

In the case of *State ex rel. vs. Lewis*, 5 O. N. P. 394, the court had occasion to construe the position of "fish and game warden" as created by 85 O. L. 171. Said act provided that the fish and game commissioners of the state should appoint a fish and game warden in each county of the state. Said warden was required to

give bond for the faithful performance of his duties. Those duties the court, at page 396, described thus :

“By those sections, in all prosecutions for violation of the fish and game laws, he is clothed with authority greater than that of a constable or sheriff. He is required to file an affidavit when he believes there has been a violation of the fish and game laws, charging the supposed violator with the offense. He serves the warrant himself, and arrests and brings the accused before the court. He serves subpoenas on witnesses and summons the jurors, and if the venire be exhausted without obtaining the required number to fill the panel, he may summon any of the bystanders to act as jurors. He takes charge of the jury when they retire for deliberation. In case of a conviction and sentence to jail, he commits the prisoner to the jail of the county the same as the sheriff of the county. By sections 6966-2 and 6968 he is a ‘fish and game warden.’”

The court further said :

“From this enumeration of the powers and duties of a county fish and game warden, it is clear under the authorities quoted that he is a public officer, and, in his jurisdiction, he is clothed with the right and corresponding duty to execute a public trust in the supposed interest of the people.”

In the case just quoted from, the statute was held unconstitutional as being an attempt to create a county office and to provide for filling the same by appointment, contra to sections 1 and 2 of Article X of the constitution of Ohio.

In view of the foregoing, I am of the opinion that the position of fish and game protector, provided for by section 1439 G. C., is an “office” within the meaning of section 4 of Article XV of the constitution of Ohio. It therefore follows that the incumbent of that office must have all the qualifications of an elector, one of which is that he must be of the age of twenty-one years. Your question is therefore answered in the negative.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

1595.

BOARD OF STATE CHARITIES.—DISCUSSION OF TEMPORARY AND PERMANENT CARE AND CUSTODY OF DEPENDENT GIRLS COMMITTED BY JUVENILE COURT TO SAID BOARD.

1. *Dependent girls committed by the juvenile court to the temporary care and custody of the board of state charities, remain under the legal control and guardianship of the court until they attain the age of twenty-one years, should such commitment for temporary care endure that length of time.*

2. *Dependent girls committed by the juvenile court to the permanent care and custody of the board of state charities come under the sole and exclusive guardianship of such board, and such board shall, in the absence of any proceedings*