

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

holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, 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. Wherever in any township a municipal court shall replace and supersede the justices of the peace, the municipal judge or the presiding municipal judge, if there be more than one, shall have the same powers to fill vacancies on the board of trustees."

Under the foregoing section, the justice of the peace of a township holding the oldest commission in such township is required to fill a vacancy in the office of township trustee of such township by appointing "a suitable person \* \* \* having the qualifications of elector in the township." In other words, the legislature has, in delegating the power of appointment, stipulated only that the "person" appointed to fill the vacancy be, first, suitable, and second, a qualified elector in the township.

The word "suitable" is defined in Webster's New International Dictionary as "capable of suiting, fitting; proper." Hence, the person appointed must be first a "capable of suiting," "fitting" or "proper" person.

The qualifications of an elector are set forth in Article V, Section 1, Ohio Constitution, and section 4785-30, General Code. Article V, Section 1, Ohio Constitution, reads:

"Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, *shall have the qualifications of an elector*, and be entitled to vote at all elections."

Section 4785-30, General Code, provides:

"No person shall be permitted to vote at any election unless he shall have been a resident of the state for one year, of the county for thirty days, and of the voting precinct twenty days next preceding the election at which he offers to vote, except as otherwise hereinafter provided. A qualified elector who is the head of a family and has resided in the state and in the county the length of time required herein and who in good faith removes his family from one precinct to another precinct in the same political subdivision, he and the other qualified electors in his family shall have the right to vote in such precinct, provided that in the case of registration precincts they shall have corrected their registrations as herein required."

Thus the person appointed must be, secondly, a citizen of the United States, over twenty-one years of age, and must have resided in Ohio one year, in the county thirty days and in his voting precinct of the township twenty days, at the time of his appointment.

Whether or not a person is a "capable of suiting," "fitting" or "proper" person to perform the duties of township trustee is a question of fact to be determined by the justice of the peace having the oldest commission in the township. If, as in this case, the justice of the peace feels, in the exercise of his discretion, that his father is a person who will be capable of performing the

duties of the office of township trustee properly, and his father has the qualifications of an elector in the township, as above indicated, there is nothing in the law to prevent the appointment.

There is no general constitutional or statutory provision in this state, as there is in some states, preventing the practice of "nepotism," which term is defined in the recently decided case of *State ex rel. Robinson vs. Keefe*, 111 Fla., 701; 149 So. Rep., 702, as "the bestowal of patronage by public officers in appointing others to offices or positions by reason of their blood or marital relationship to the appointing authority, rather than because of the merit or ability of the appointee." Hence, it would not be contrary to any constitutional or statutory provision for a justice of the peace to appoint his father to the office of township trustee on the ground of relationship.

In Annual Report of the Attorney General for 1907, at page 273, it was held in an opinion that a county officer may appoint his wife or minor child as his deputy or assistant.

In view of the foregoing, I am of the opinion that 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.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

3322.

APPROVAL—CONTRACT BETWEEN STATE OF OHIO AND CLARENCE L. KNOWLTON OF BELLEFONTAINE, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF CONTRACT FOR GENERAL WORK AT MIAMI UNIVERSITY.

COLUMBUS, OHIO, October 20, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of Miami University, Oxford, Ohio, and Clarence L. Knowlton, of Bellefontaine, Ohio. This contract covers the construction and completion of General Work Contract for a project known as Remodeling and Additions to Freshman Dormitory, Miami University, Oxford, Ohio, in accordance with Item No. 1, Item No. 9 (Alt. 1), Item No. 11 (Alt. 3), Item No. 12 (Alt. 4), Item No. 13 (Alt. 5) and Item No. 15 (Alt. 7), and two special substitutions of the form of proposal dated August 22, 1934. Said contract calls for an expenditure of One Hundred Forty-five Thousand, Four Hundred Forty-six (\$145,446.00) Dollars.

You have submitted the certificate of the secretary of the board of trustees of Miami University showing that there are available, moneys from funds of the university, which moneys when supplemented by the moneys from the federal government, will be sufficient to cover the cost of erection of the improvement. In addition, you have submitted a contract bond upon which the Aetna Casualty