

5177.

CONSERVATION COUNCIL—UNAUTHORIZED TO SUSPEND  
OPERATION OF LAW REQUIRING BREEDERS OF  
PHEASANTS TO OBTAIN LICENSE.

*SYLLABUS:*

*Those who raise pheasants to be sold, whether for restocking or other purposes, are required to obtain a breeder's license and it is beyond the present power of the Conservation Council to suspend, by regulation, the operation of the existing law.*

COLUMBUS, OHIO, February 21, 1936.

HON. L. WOODDELL, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR: Receipt is acknowledged of your recent communication which reads:

"With reference to the \$5.00 fee assessed for a pheasant breeder's license, a question has arisen as to whether this license should be assessed upon farmers who raise this game to be sold for restocking purposes, or whether the license could be suspended under these circumstances or even that pheasant breeding of this nature might be carried on under the supervision of the game protector without a license.

We would like to have your opinion on this matter. Will it require the enactment of a new law or a repeal of the present pheasant breeders' license regulation?"

Section 1436 of the General Code provides, in part, as follows:

"It shall be lawful for any citizen of the state of Ohio to engage in the business of raising and selling domesticated English ring neck or Mongolian or Chinese pheasant, mallard or black ducks, on the lands on which he is the owner or lessee. Any citizen desiring to engage in the propagation of the birds herein mentioned, shall make application in writing to the conservation commissioner for a permit, and when it shall appear that such application is made in good faith, and upon the payment of a fee of five dollars shall be granted a breeder's license, permitting such applicant to breed and raise for commercial purposes the birds above enumerated, under the regulations herein set forth.

Such license shall expire on the last day of December of each year at midnight.”

It will be noticed that this section employs the words, “any citizen,” as descriptive of those who shall apply for, and receive, permits to breed pheasants and that no classification and no exceptions appear therein.

It is a general principle of statutory construction that when the language of a statute is clear and unmistakable, there is no authority to construe such statute. *Slinguff v. Weaver*, 66 O. S., 621; *Maxfield v. Brooks*, 110 O. S., 566; *State, ex rel. v. Brown*, 121 O. S., 329.

When the intention of the legislature is so apparent from the face of a statute that there can be no question as to the meaning, there is no room for construction. *People v. Sands*, 102 Cal., 12, 36 Pac., 404. It is not allowable to interpret what has no need for interpretation. *Gilbert v. Dutruit*, 91 Wis., 661, 65 N. W., 511. There is no safer or better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses. *Swartz v. Seigel*, 117 Fed., 13. These views of eminent tribunals, including the Supreme Court of Ohio, are supported by numerous cases. When the meaning of a statute is clear its consequences, if evil, can be avoided only by a change of the law itself, to be effected by the legislature and not by judicial construction. Lewis' *Sutherland Statutory Construction*, 2nd Ed., Sec. 367, citing cases.

The wisdom, policy or expediency of legislation is a matter with which, of course, construction or interpretation of the laws is not, and cannot be, concerned. Whether or not a given law is the best that could have been enacted on the subject whether or not it is calculated to accomplish its avowed object—these are questions, you will appreciate, which do not fall within my official province to decide.

Whatever may be the breadth of the rule-making powers of the Conservation Council, conferred by virtue of Sections 1438-1 and 1438-2, General Code, as amended by the 91st General Assembly (116 O. L., pp. 311, 314), those powers expressly relate to rules, or orders, for the taking and hunting of birds, animals, game and fish, and for open seasons therefor. There appears to be no language used in the recent amendments of these sections, or elsewhere, whereby provision of statutes respecting licensing of pheasant breeders may, by action of the Conservation Council, or the Conservation Commission, be set aside or suspended.

There being no other section of the General Code which can be read in conjunction with Section 1436, *supra*, to modify or alter that which is clearly stated, there is but one conclusion I can reach.

Specifically answering your question, those who raise pheasants to be sold, whether for restocking or other purposes, are required to obtain a breeder's license and it is beyond the present power of the Con-

servation Council to suspend, by regulation, the operation of the existing law.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5178.

BOARD OF EDUCATION—NOT NECESSARY TO COLLECT  
INTEREST ON SCHOOL FUNDS UNDER DEPOSITORY  
CONTRACT WHEN BANK OPERATED BY CONSERVATOR  
UNDER FEDERAL BANK CONSERVATION ACT.

*SYLLABUS:*

1. *Under Section 4749-1, General Code, it is not mandatory for a board of education to collect interest on school funds accruing under a depository contract during the period when a national bank is being operated by a Conservator pursuant to the Federal Bank Conservation Act.*

2. *Under Section 4749-1, General Code, such board of education may collect the principal and waive the interest accruing during the period of such conservatorship.*

3. *There exists the right to interest on deposits accruing at the contract rate during the period when a national bank is in conservatorship, subject to being divested by an appropriate provision in a valid plan of reorganization.*

4. *The state and its various political subdivisions act in a proprietary capacity in depositing public funds pursuant to statute, and therefore are bound by all valid plans for the reorganization of closed national banks to the same extent as private depositors.*

5. *Under Section 207, Federal Bank Conservation Act, when a reorganization plan is approved by the Comptroller of the Currency and the necessary consents are secured, all depositors and other creditors, and all stockholders, become bound by its terms and entitled to its benefits, regardless of whether or not they have consented thereto.*

COLUMBUS, OHIO, February 21, 1936.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mount Gilead, Ohio.*

DEAR SIR: I am in receipt of your letter in which you state that a board of education in your county has duly executed a depository contract for the years 1932 and 1933 with the Mount Gilead National Bank. A conservator was appointed for this bank, following the so-called banking holiday, under Section 203, Bank Conservation Act of