

of the work is done by the state highway department without co-operation of county, etc., and part of it as a consequence of separate proceedings initiated by county commissioners for state aid. Furthermore, in the one case, the assessment is to be made by the state highway commissioner (section 1191) and in the other case by county commissioners (section 1214). In fact the two plans are so entirely different in all their aspects that there is no way of reconciling them. Under these circumstances, section 1231 must be taken as meaning that if the state highway commissioner sees fit to undertake the construction and improvement of a section of main market road without the co-operation of county, township or village, he must bring the section to completion without such local co-operation, and must make the assessment at the percentage and in the manner pointed out by section 1191.

Respectfully,

JOHN G. PRICE,  
Attorney General.

1085.

FISH AND GAME LAWS—SECTIONS 1423 G. C. AND 1421 G. C. AS AMENDED, DISCUSSED—EFFECTIVE DATES OF SUCH STATUTES AND WHAT STATUTES GOVERN IN ISSUING PERMITS FOR FISHING.

*Sec. 1423 G. C. which is a part of the codified fish and game laws, became effective September 5, 1919. H. B. 405 amended said section and was filed in the office of the secretary of state, January 29, 1920 and can not be operative until the expiration of 90 days from the date it was so filed. Until the expiration of said 90 days it can not be assumed that it will become a law. In the meantime the division of fish and game should be governed by section 1423 G. C. in the form as effective September 5, 1919.*

*Sec. 1421 G. C. as now in force or as amended does not prohibit the taking of fish in the Lake Erie fishing district, not otherwise prohibited, by means other than as described in said section which must be used in the taking of the fish enumerated in said section.*

COLUMBUS, OHIO, March 17, 1920.

*The Department of Agriculture, Bureau of Fish and Game, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

“There appears to be much confusion in connection with the issuance of permits to catch carp, as provided under section 1421 of the fish and game laws now in force. The present session of the legislature passed over the Governor's veto H. B. 405, including therein an amendment which prohibits the taking of fish, except with hook and line, between Cedar Point across the bay to the Baltimore Elevator Docks.

Section 1411 defines the Lake Erie fishing district. Under this section the taking of fish for commercial purpose is permitted, also section 1423 provides for a license fee for operation in the Lake Erie district. H. B. 405 apparently will become a law about April 23rd. The enclosed ‘Permission to Take Carp’ is issued for the spring fishing season which would extend to the 31st day of August.

From the fact that the house bill would become a law during the above period, would you advise the department to issue permits under a new form,

and if so, under what statement or regulations? Without question the section as amended will be fought bitterly by fishermen, and the subject has been plainly put up to me as to which section would hold precedence. Therefore, please advise whether or not the department shall strictly enforce the bill as amended or permit commercial fishing as provided under section 1411 in the Lake Erie fishing district?

Section 1421 relates to the taking of carp, mullet, grass pike, sheephead and moon-eyed shiners, stating that they may be taken in any number, except that they may not be taken with a net or seine having meshes not less than four inches. Would this provision prohibit the use of a net other than the one mentioned in the taking of other specie of fish in the Lake Erie district, as section 1411 provides, with devices other than hook and line?"

Section 1423 G. C., which was enacted as a part of the codified fish and game laws, was filed in the office of the secretary of state June 6, 1919, and as now in effect provides: (108 O. L., 591.)

"No person, firm or corporation shall use or operate for the purpose of catching fish, a boat, net or device other than hook and line with bait or lure in the Lake Erie fishing district of this state, or the bays, marshes, estuaries or inlets bordering upon, flowing into or in any manner connected with Lake Erie, without a license from the secretary of agriculture. Applications for licenses and all licenses herein required shall be in such form as the secretary may prescribe. The fees for license in the Lake Erie fishing district, and in the bays, marshes, estuaries or inlets bordering upon, flowing into, or in any manner connected with Lake Erie, where fishing is permitted with a 4-inch seine, for each fishing season defined in this chapter shall be as follows:

For each rowboat used in fishing with gill nets or bar nets, four dollars;

For each sailboat used in fishing with gill nets or bar nets, six dollars,

For each gasoline or other power boat, of five net tons or under, used in fishing with gill nets or bar nets, twelve dollars and fifty cents;

For each gasoline or other power boat, of over five net tons, and for each steamboat used in fishing with gill nets, twenty dollars;

For each row boat used in fishing with trot lines, one dollar and fifty cents;

For each seine used in fishing, four dollars;

For each pound net used in fishing, three dollars;

For each net or other device used in fishing, other than a gill net, bar net, seine, pound net or hook and line, one dollar and fifty cents.

When a person, firm or corporation applies to the secretary of agriculture for a license, the secretary, upon receiving the proper fees as prescribed, shall issue the same. Such license shall remain in force and entitle the holder thereof to fish as permitted by law from the date of issue to and including the last day of the season for which such license was issued. The license shall be carried by an operator of boats, net, or other device while being used in catching fish, and exhibited on demand to any protector, constable, sheriff, deputy sheriff or other police officer, or the secretary of agriculture. It shall be unlawful for any licensee having such license in his possession to refuse to exhibit it on demand to any proper officer. Each boat, net, or other device used in catching fish contrary to the provisions of this act, and each net or other device used or operated without having the metal tag attached thereto, as provided by law, shall constitute a separate offense."

Section 1411 G. C., which defines the Lake Erie fishing district, provides:

"The waters of Lake Erie, the waters of Sandusky Bay, as far west as a

straight line drawn from the mouth of Tommy Creek to Slate's Point, and as far east as one-fourth of a mile from the mouth of the Clack Channel, and the waters of the Maumee Bay up to a point north of Toledo commonly known as Presque Isle, are in and shall be known as the Lake Erie fishing district. All other waters over which the state of Ohio has jurisdiction, whether lakes, rivers, creeks, or reservoirs, or whether natural or artificial, including East Harbor, West Harbor, Middle Harbor, in Ottawa county, and the waters of Ten Mile Creek lying within this state are in and shall be known as the Inland fishing district."

House bill No. 405 was filed in the office of the secretary of state January 29 1920 and will not become effective until the expiration of ninety days from said date. The constitution provides for this postponement in order that a referendum by the people may be had if they so desire, and until the expiration of the said ninety days it can not be assumed that it will become a law.

Under the provision of section 1423 G. C. the secretary of the department of agriculture is required to issue licenses for the remainder of the season to all proper applicants. You are therefore advised that in the issuance of licenses you should ignore the provisions of section 1421 G. C. as amended in H. B. 405 until such time as it becomes a law. If said amendment becomes a law, of course you should be governed by the same at that time. Said section as amended provides:

"Carp, mullet, grass pike, sheepshead and moon-eyed shiners may be taken in any number, except that they may not be taken with a net other than a seine having meshes not less than four inches, stretched mesh, fishing measure, in the bays, marshes, estuaries, or inlets, bordering upon, flowing into, or in any manner connected with Lake Erie. They may, in the same manner be taken in the Ottawa river, no farther up than the Ann Arbor bridge; in the Maumee river, no farther up than the terminal bridge above the Toledo Country Club; in Portage river, no farther up than Oak Harbor bridge; \* \* in Sandusky \* \* \* river \* \* \* no farther up said river than an imaginary line running from the west point of Squaw Island across Sandusky river to Teal Pond Point, thence south to the mainland, in \* \* \* Mud creek no farther up than \* \* \* one-half mile west of the Mud creek bridge on Port Clinton road, and no farther up the La Carp creek, Little Portage river, Tousaint river, Turtle creek or Ward's canal, than the water level of Lake Erie extends in these streams. In any of the waters herein described it shall be unlawful to set or leave stationary a seine that will prevent fish from entering or going from the mouth of any river. In the Lake Erie fishing district a seine of smaller mesh may be used. Nothing in this section shall be construed to permit the use of any net whatever in any stream flowing into Lake Erie east of Sandusky Bay, except an eight foot minnow net.

Neither the fish named in this section nor any other fish shall at any time be taken or caught, except with hook and line as provided in section 1392 of the General Code, in that portion of Sandusky Bay lying between Cedar Point and the main land and east of a line from the extreme west point of Cedar Point across the bay to the Baltimore elevator dock."

It is evident that this amendment prohibits fishing by any means other than hook and line in that part of Sandusky Bay as described in said amendment. In this respect it limits the Lake Erie fishing district as defined in section 1411 supra. If said section becomes a law, inasmuch as it was passed after the fish and game code was enacted, the earlier sections of the General Code inconsistent therewith, or the parts of any sections that may be inconsistent therewith, must be considered as repealed by implication.

"In so far as two statutes are irreconcilable, effect must be given to the one which is the later."

State ex rel. vs. Halliday, 63 O. S., 165.

"A later statute, whose general provisions are incompatible with an earlier one, must be read as an exception thereto."

Cincinnati vs. Holmes, 56 O. S., 104.

It therefore follows that your department can not legally issue a license to fish by means other than by a hook and line in these waters where such fishing is prohibited and your certificate should make this exception in defining the territory if said amendment goes into operation.

Referring to your second inquiry, section 1421 G. C. as now in force provides:

"Carp, mullet, grass pike, sheephead and moon-eyed shiners may be taken in any number, except that they may not be taken with a net other than a seine having meshes not less than four inches, stretched mesh, fishing measure, in the bays, marshes, estuaries, or inlets, bordering upon, flowing into, or in any manner connected with Lake Erie. They may, in the same manner be taken in the Ottawa river, no farther up than the Ann Arbor bridge; in the Maumee river, no farther up than the terminal bridge above the Toledo Country Club; in Portage river, no farther up than Oak Harbor bridge; that portion of Sandusky bay and river west of an imaginary line running from the west point of Squaw island across Sandusky river to Teal pond point, thence south to the mainland, in that part of Mud bay and Mud creek west of an imaginary line one-half mile west of the Mud creek bridge on Port Clinton road and no farther up the La Carp creek, Little Portage river, Toussaint river, Turtle creek or Ward's canal, than the water level of Lake Erie extends in these streams. In any of the waters herein described it shall be unlawful to set or leave stationary a seine that will prevent fish from entering or going from the mouth of any river. In the Lake Erie fishing district a seine of smaller mesh may be used. Nothing in this section shall be construed to permit the use of any net whatever in any stream flowing into Lake Erie east of Sandusky bay, except an eight-foot minnow net."

This section enumerates the kinds of fish that may be taken in any number and defines the waters from which they may be so taken and further prescribed the method. It is not believed that this section is intended to relate to any other kind of fish, methods or territories except as mentioned in said section. As said section now stands, it is not of a prohibitory character, but rather it grants a special privilege with reference to the taking of the kinds of fish enumerated except it makes it clear that no nets may be used in any stream flowing into Lake Erie east of Sandusky bay, except an eight-foot minnow net. Said section may be considered as prohibitory in this respect.

However, if the amended section becomes a law, the provisions therein referring to certain parts of Sandusky bay must be regarded as prohibiting the taking of all fish in the waters therein defined except by hook and line as provided in section 1392 G. C.

You are therefore advised that section 1421 as amended or as now in force does not prohibit the taking of fish in the Lake Erie fishing district not otherwise prohibited by means other than as described, which must be used in the taking of carp, mullet, grass pike, sheephead and moon-eyed shiners.

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