

have not been changed by the amendment, they must be given the same meaning as in the original act.

In 40 Cyc. 2185, may be found the following:

"A witness, who in obedience to subpoenas, attends at the same time in several cases is entitled to fees and mileage for each * * *."

The above rule as laid down in Cyc, of course, applies generally to all cases and must be modified to the extent of the statutes or holdings in each state.

However, in Opinions of the Attorney General for 1914, Vol. 1, p. 55, may be found the following:

"It seems to me that the situation of a constable, in respect to the fee for assistants, is no different from that of a witness, who is subpoenaed in more than one case in a day, especially when such several fees are not to be paid from the public treasury, but are taxed against and paid by a private individual."

In this opinion it was held that a justice of the peace in criminal cases may tax in favor of the constable a fee for each assistant constable in each case, notwithstanding the fact that such assistants participated in more than one arrest in a day.

In view of all the foregoing, it is my opinion that every witness is entitled to his fee for each day's attendance in each case in which he is subpoenaed. If he is subpoenaed in one case and is called upon to testify in other cases upon the same day, he would be entitled to receive twenty-five cents additional for each case in which he testifies.

Respectfully,
C. C. CRABBE,
Attorney General.

2289.

FISH AND GAME—LICENSE FEES THAT MAY BE CHARGED FOR A ROW-BOAT USED IN FISHING WITH A TROT LINE SECTION 1423 CON-
STRUED.

SYLLABUS:

The provisions of section 1423, General Code, permit charging a license fee for a row-boat used in fishing with a trot line when fishing in the Lake Erie Fishing District and when fishing 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 four-inch seine. Also a license fee of two dollars may be charged for each device used in fishing known as a "trot line."

COLUMBUS, OHIO, March 13, 1925.

Department of Agriculture, Division of Fish and Game, HON. D. O. THOMPSON, Chief, Columbus, Ohio.

DEAR SIR:—I am in receipt of your request for an opinion which reads as follows:

"Kindly advise your official opinion with reference to license fees to be charged under provisions of the following two paragraphs of section 1423 of the General Code:

“For each row boat used in fishing with trot lines, two dollars;

“For each net or other device used in fishing, other than a gill net, bar net, seine, pound net or hook and line, two dollars;”

“The point we want to clarify refers to license fees on trot lines, it being our interpretation that a fee of \$2.00 should be charged for each trot line under the latter paragraph quoted above, and \$2.00 for each row boat under the first paragraph quoted above. A row boat using two trot lines being assessed \$6.00.”

Restating your question, you ask whether you may collect a license fee for a row boat used in fishing with trot lines, and may also collect a license fee for said trot lines used as a device in fishing.

The pertinent parts of section 1423, General Code, bearing upon this matter, read as follows:

“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 director of agriculture.

* * * * *

“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 row-boat used in fishing with trot lines, two dollars;

* * * * *

“For each net or other device used in fishing, other than a gill net, bar net, seine, pound net or hook and line two dollars;

* * * * *

“The license shall be carried by an operator of boats, net or other device while being used in catching fish, * * *. 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.”

From the language used in this section it is evident that no person, firm or corporation, may operate a boat for the purpose of catching fish, without having first secured a license unless such person, firm or corporation comes within the exceptions found in the section.

The boats named are row-boat, sailboat, gasoline or other power boat and steam-boat. Any boat falling within those named in this list comes within the language of the section.

The statute specifically names a rowboat used in fishing with trot line. It also enumerates some of the devices used in fishing, to-wit: gill net, bar net, pound net, trot line, seine and *hook and line*. Many devices are named in other sections of the Fish and Game Code.

Besides the devices above named "fyke net" is mentioned in sections 1420, 1422 and 1425 of the General Code. The last sentence of section 1425 General Code defines "set net" as,

"The words pound net, fyke net, crib net, *shall in each case mean a tarred set net.*"

Section 1420 General Code prohibits in the *inland fishing district* the use of all the devices mentioned and names as other devices used for fishing that are prohibited the following:

"Bob lines, float lines, trot lines, grabbing with the hands, spearing, shooting or *any other device other than by angling.*"

Section 1420 General Code describes a "trot line" that may be used in the inland fishing district, "except in those lakes, harbors and reservoirs controlled by the state" as; one "with not more than fifty hooks and no two hooks less than three feet apart."

This is the only statement of the Fish and Game Code that attempts a description of what the statute considers a "trot line" and this "trot line" is the one permitted in the inland district. Since a trot line may be used in the Lake Erie district, this line may be used there and, I assume, other "trot lines" so long as they conform to what is commonly known as "trot lines."

Because it is necessary to distinguish between a "trot line" and "hook and line" or "hook and line with bait or lure" since "hook and line" is a device excepted from the license provisions of section 1423 General Code, and is not found under any of the special provisions thereof, except the one you last quote; I have quoted from the other sections of the Fish and Game Code.

Section 1392 General Code (b) in part provides:

"Fish shall be taken only by angling unless otherwise specifically permitted by this act. * * * Tipups, trot lines, set lines, float lines, spears, grappling hooks, naked hooks, snatch hooks, hook and line with more than three hooks attached, eel weirs, eel pots, and nets of any kind shall not be used to take fish except as specifically permitted by this act."

Angling is defined in Section 1390, General Code as follows:

"Angling or fishing (exclusive of netting): Taking fish by line in hand or rod in hand, with not more than three baited hooks attached thereto, or with lure with not more than three sets of three hooks each attached thereto."

"Hook and line" must refer to the device of the definition i. e.,

"Line in hand or rod in hand, with not more than three baited hooks attached thereto, or lure, etc."

and that is what is meant by "hook and line with bait or lure." This device requires no license.

However, this device may be used from any one of the boats that require a license.

But since generally fish may be taken only by angling as defined in the Code and as stated in Section 1392, General Code, except as specifically permitted by this act and since no specific provision appears in Section 1423, General Code, or elsewhere in the code requiring a license for a boat used when fishing or angling with a "hook and line" or "hook and line or lure" it appears the statute does not require a license for such boat.

I have not overlooked Section 1417 which mentions a "trot line" or a "hook and line" nowhere else defined that may be used in fishing through holes two and one-half feet in diameter in the ice. This section only applies to the Inland Fishing District.

From what is said I reach the conclusion that a license fee of Two Dollars may be charged for each rowboat used in fishing with a trot line when fishing in the Lake Erie Fishing District and when fishing 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. Also that a license fee of Two Dollars may be charged for the device used in fishing known as a "trot line."

Respectfully,
C. C. CRABBE,
Attorney-General.

2290.

APPROVAL, BONDS OF SUGAR CREEK TOWNSHIP RURAL SCHOOL DISTRICT, TUSCARAWAS COUNTY, \$7,000.00.

COLUMBUS, OHIO, March 13, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2291.

APPROVAL, BONDS OF WEST LOVELAND RURAL SCHOOL DISTRICT, NO. 7, HAMILTON COUNTY, \$50,000.00.

COLUMBUS, OHIO, March 14, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2292

APPROVAL, BONDS OF KINSMAN TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, \$10,000.00.

COLUMBUS, OHIO, March 16, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.