

rendered by officers and employes in the performance of such duties, are required to be done and performed by persons on the payroll of the state and the several departments thereof. In this view it would not be competent for any officer of the state to impose any part of said duties and services upon an employe of a private corporation, or in consideration of the services of such employe to pay to his employer the amount of the compensation paid by the employer to the employe for the services so rendered. Still less would such officer of the state be authorized to bind the state for the payment out of state funds of any amount to and for an employes' benefit plan carried on by or under the auspices of such private corporation for the purpose of making payments to its employes in case of sickness or accidental injuries.

Nevertheless a contract may be properly made by and on behalf of the state for telephone services for the several state officers and departments, and obviously this is true although the particular service to be rendered by the telephone company requires the services of one or more employes of the telephone company in the use of telephone equipment of said company; and if the central switchboard system, referred to in the proposed contract here in question, were set up for the use of the state office building and the state departments quartered therein, in a building owned and occupied by the telephone company, it is not thought that there would be any question about the authority of the proper officer of the state to contract for such centralized switchboard service even though such centralized switchboard were operated by persons in the employ of the telephone company; nor in such case would there be any question as to the power and authority of the state to pay the telephone company the reasonable and proper charges made by the telephone company for such services, without reference to the particular factors which, from the standpoint of the telephone company, operated to determine the amount of such charge. The mere fact that as a matter of convenience and operating efficiency such centralized switchboard system is to be set up and operated in the new office building rather than in the property of the telephone company does not, in my opinion, affect the right of the state to pay for such centralized switchboard service even though such centralized switchboard is to be operated by employes of the telephone company. It is suggested, however, that the monthly charge of the telephone company for such centralized switchboard service should be stated in the contract in terms of money without reference to the factors upon which such charges are based.

In view of the necessity for correction of the contract for telephone switchboard operating service, it is perhaps well to call to your attention the discrepancy existing in the statement in paragraph one thereof in which the company agrees to furnish telephone service at the switchboard for "the period of eight hours in each Sunday and Holiday from 8:30 A. M. to 5:30 P. M." A period of nine hours exists between the times mentioned, and the contract should accordingly be clarified as to whether the service contemplated is for eight hours or nine hours.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3355.

FISHING LICENSE—REQUIRED OF NON-RESIDENT DESIRING TO FISH WITH REEL AND ROD OR A POLE.

SYLLABUS:

1. *A non-resident desiring to fish with reel and rod in Ohio on and after*

July 31, 1931, will still be required to take out a license by virtue of the provisions contained in section 1430, General Code, as amended.

2. A non-resident, by virtue of section 1430, General Code, as amended, can use only one pole while fishing in Ohio.

3. A license granted by virtue of section 1430, General Code, as amended, permits a non-resident to fish with either rod and reel or a pole in Ohio and a separate license is not required for each separate method of angling.

4. A non-resident who fishes with a line without a pole is not required to take out a license, since section 1430, General Code, as amended, specifically provides that a license is only required when a non-resident is angling with reel and rod or with a pole.

COLUMBUS, OHIO, June 24, 1931.

HON. J. W. THOMPSON, *Conservation Commissioner, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date, which reads as follows:

“At your earliest convenience I should appreciate your opinion on the following points in House Bill No. 150, Mr. Weaver, entitled ‘A Bill to Amend Section 1430 of the General Code Relative to Fishing Licenses and Effective July 31, 1931’:

1. Is a Non-Resident required to take out a reel and rod license, starting July 31, 1931?

2. If a Non-Resident takes out a pole license is he allowed the use of more than one pole?

3. If a Non-Resident purchases a pole license is he also required to purchase a rod and reel license, or will one license cover both?

4. If a Non-Resident fishes with a line without a pole is a non-resident license required?”

Section 1430, General Code, as amended in 114 Ohio Laws, House Bill No. 150, effective July 31, 1931, reads in part as follows:

“No person shall take or catch any fish by angling with reel and rod in any of the waters of the state of Ohio, or engage in fishing with reel and rod in such waters without first having procured a license so to do. No non-resident shall take or catch any fish by angling with a pole in any of the waters of the state of Ohio, or engage in fishing with a pole in such waters without first having procured a license.

Said licenses shall be procured in the manner provided for taking out hunting and trapping licenses. The applicant shall pay to the clerk having authority to issue such licenses the sum of three dollars, if a non-resident, and the sum of one dollar if a resident of Ohio, as a license fee therefor, together with the sum of twenty-five cents if a non-resident and ten cents if a resident, as a fee to the clerk; provided, however, that any person under the age of eighteen years may take or catch fish by angling without a license.”

Courts have held that since the state may confer the exclusive right of fishing on its own citizens and expressly exclude non-residents, it may therefore grant non-residents the privilege to fish upon conditions different from those that it

imposes upon its own residents, as for example, requiring of non-residents a larger license fee and requiring a license for fishing by methods otherwise permitted to residents.

The legislature amended section 1430, General Code, by adding a proviso therein requiring a license to be taken out by non-residents fishing with a pole in the waters of the state of Ohio and also increasing the license fee for a non-resident. Section 1430, General Code, previous to being amended, read in part as follows:

“No person shall take or catch any fish by angling with reel and rod in any of the waters of the state of Ohio, or engage in fishing with a reel and rod in such waters without first having procured a license so to do.”

In other words, the statute, previous to its amendment, required all persons angling with reel and rod in the waters of the state of Ohio to procure a license, and did not discriminate between a resident and non-resident fishing in Ohio with rod and reel.

The legislature evidently intended by amending section 1430, General Code, to still require residents and non-residents angling with reel and rod to procure a license and, in addition, to also require non-residents angling with a pole to procure a license. It appears to me that the legislative intent was to discriminate between residents and non-residents when the method used in fishing was with a pole. To hold otherwise would be to say that the legislature intended to require a resident to take out a license for the privilege of fishing with reel and rod and to exempt a non-resident when fishing by the same method and to require a non-resident to procure a license only when angling with a pole. However, it appears to me that the legislature certainly did not intend that only residents were to be licensed when using reel and rod and that non-residents were to be licensed only when angling with a pole.

Therefore, in specific answer to your first question, it is my opinion that a non-resident desiring to fish with reel and rod in Ohio on and after July 31, 1931, will still be required to take out a license by virtue of the provisions contained in section 1430, General Code, as amended.

Your second inquiry raises the question of whether or not a non-resident may use more than one pole after a fishing license is issued to him. Inasmuch as the statute specifically reads “with a pole”, it is my opinion that a non-resident can not use more than one pole while fishing in Ohio. If the legislature had intended otherwise, it would not have used the words “with a pole”.

It is therefore my opinion that a non-resident, by virtue of section 1430, General Code, as amended, can use only one pole while fishing in Ohio.

Your third inquiry involves the question of whether or not a fishing license issued by the state of Ohio is for the privilege of angling by certain means or methods or for the instrument used in fishing. It appears to me that the license required by the state of Ohio is for the privilege of fishing and not for the privilege of using certain instruments. If the legislature intended to license the instrument used in fishing it would have enacted in section 1430, General Code, as amended, provisions similar to those contained in section 1423, which reads in part as follows:

“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, ten dollars;
- For each sailboat used in fishing with gill nets or bar nets, ten dollars;
- For each gasoline or other power boat, of five net tons or under, used in fishing with gill nets or bar nets, twenty dollars;
- For each gasoline or other power boat, of over five net tons, and for each steamboat used in fishing with gill nets, thirty dollars;
- For each rowboat used in fishing with trout line, two dollars;
- For each seine used in fishing, seven and one-half cents per rod, provided, however, that the minimum license for any seine used in fishing shall be five dollars, in any one season;
- For each pound net used in fishing, four 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;
- For each gasoline or other power boat and for each steamboat owned or chartered by any person not a resident of the state of Ohio, fifty dollars."

Your attention is also called to the fact that section 1430, General Code, as amended, merely provides that a fee of three dollars be paid by a non-resident "as a license therefor" and does not require that a license fee be paid for the instruments used.

It is therefore my opinion that a license granted by virtue of section 1430, General Code, as amended, permits a non-resident to fish with either rod and reel or a pole in Ohio and that a separate license is not required for each separate method of angling.

In view of what has been said as to the power of the state to confer the privilege of fishing upon residents and non-residents, it follows that a non-resident who fishes only with a line need not pay a license fee, since the state has deemed it advisable only to require a license to be procured by a non-resident when angling either with reel and rod or pole.

It is therefore my opinion that a non-resident who fishes with a line without a pole is not required to take out a license, since section 1430, General Code, as amended, specifically provides that a license is only required when a non-resident is angling with reel and rod or with a pole.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3356.

VILLAGE SCHOOL DISTRICT—BECOMING CITY SCHOOL DISTRICT ON DECEMBER 31, 1930—SUPERINTENDENT HIRED UNDER FORMER SECTION 4740, GENERAL CODE, BECOMES CITY SUPERINTENDENT FOR REMAINDER OF TERM OF CONTRACT—EXCEPTIONS NOTED.

SYLLABUS:

Where, in a village school district which was automatically advanced to a city school district, by reason of a change of population, on December 31, 1930, there had been employed a person whose employment had existed by reason of a