

the county's share of the cost and expense of said improvement, said county commissioners, as a part of said improvement as a pending proceeding, may acquire the necessary land for widening said road under authority of said Section 1201, General Code, as it read prior to its amendment.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2047.

CARP—AUTHORITY TO EXTERMINATE VESTED IN DIRECTOR OF AGRICULTURE—MAY EXERCISE DISCRETION.

*SYLLABUS:*

*By the terms of Section 1447, General Code, authority is vested in the Director of Agriculture, his agents and employes to exterminate carp in any waters of the State. The manner and means of so doing is within the discretion and sound judgment of the Director of Agriculture.*

COLUMBUS, OHIO, May 2, 1928.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Columbus, Ohio.*

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

“I am herewith handing you a letter from Mr. W. of Sandusky, Ohio, expressing his request for the authority of the Department of Agriculture, to eradicate the carp from the East Bay Club marshes at that point, and concerning the status of which some litigation has recently terminated in the Supreme Court of Ohio.

I should very much appreciate an opinion of your Department as to the law governing in this matter.”

The letter from Mr. W., which you enclose, reads in part as follows:

“You will doubtless recall that in 1925 and in 1926, the writer communicated with you on several occasions relative to a permit for the extermination of carp in the East Bay Club marshes.

You will also recall at that time, the question of title, the public rights of fishing and navigating, were questioned by certain persons; you are aware that the Supreme Court of Ohio has recently given its decision that these waters are private to the owners of the property.

Over the elapsed period, carp have come into these waters unmolested until the vegetation and plant life, duck foods—wild rice, etc., on which we have spent many hundreds of dollars—as well as all sport and pan fish, have completely been eradicated. Professor Osborne and your Mr. Harry Crossley have in the past several years, made exhaustive studies of the conditions here and their findings are well known to you and need no discussion here.

Our organization has expended many thousands of dollars in improving this property with the definite purpose in mind of making this into a fur farm and a wild fowl resort and breeding ground. Now that a final decision of public and private rights has been given, we are prepared to go ahead with

the project and we confidently expect that within a few years, this farm will rank among the foremost game and fur producing areas of northern Ohio.

We find ourselves continually hampered by the carp situation; vegetation that we have planted, is uprooted before it gets a chance to get started; the natural vegetation has disappeared almost entirely and all through the carp. We are appealing to you for the assistance you can give, in the way of a permit, which is provided for in the law, for the extermination of the carp.

The writer has taken this matter up here with most of the interested parties; we have a plan whereby the carp can be taken out and we believe that any reasons that have existed in the past, against the giving of the permit, have been removed.

We have every reason to believe that the plan we have, will meet with general approval and that there will be no embarrassment or annoyance to either you or your department.

The case referred to in the above communication is the *East Bay Sporting Club vs. Miller, et al.*, decided by the Supreme Court of Ohio, February 29, 1928, the first and fourth paragraphs of the syllabus of which read:

"1. The public has a right of navigation and fishing in the waters of the open bays of Lake Erie, and such rights are not limited within such public bays to the particular portions thereof which are navigable in the legal sense, but such rights of fishing and navigation extend to any portions of such waters so long as they are a part of Lake Erie or its open bays.

\* \* \*

4. The owner of land comprising both banks and the bed of a stream or river which is not legally navigable and not a part of Lake Erie or its bays has the exclusive right of fishing in such waters and may enjoin trespassers from entering upon and fishing therein."

Section 1391, General Code, provides in part as follows:

"The ownership of, and the title to all fish, wild birds and quadrupeds in the State of Ohio, not confined and held by private ownership, legally acquired, is hereby declared to be in the state, which holds it in trust for the benefit of all the people, and only in accordance with the terms and provisions of this act shall individual possession be obtained. \* \* \*"

By the terms of Section 1438, General Code:

"The Secretary of Agriculture shall have authority and control in all matters pertaining to the protection, preservation and propagation of song and insectivorous and game birds, wild animals and fish within the state and in and upon the waters thereof. He shall enforce by proper legislation or proceeding the laws of the state for the protection, preservation, and propagation of such birds, animals and havens for the propagation of fish and game, and, so far as funds are provided therefor, shall adopt and carry into effect such measures as he deems necessary in the performance of his duties."

Sections 1420, 1421, 1422, and 1429, General Code, impose restrictions with regard to the taking of carp but in view of the provisions of Section 1447, General Code, I deem it unnecessary to quote them at length herein. Section 1447, General Code, in so far as pertinent, provides:

*"Nothing in this act (G. C. Secs. 1390 to 1454) shall prevent the Secretary of Agriculture, his agents and employes from taking fish at any time or place or in any manner for the maintenance or cultivation of fish in hatcheries or for the purpose of stocking ponds, lakes, or rivers, or from exterminating carp in any waters. \* \* \**" (Italics the writer's.)

By the terms of this section, authority is vested in the Director of Agriculture, his agents or employes, to exterminate carp in *any* waters of this state. The manner and means so to do is left entirely to the good judgment and sound discretion of the Director of Agriculture. I am of the opinion, therefore, that the Director of Agriculture may authorize any person to act as his agent to carry on such work under his supervision and control. In other words, if the Director of Agriculture chooses to use or employ the officers of the East Bay Sporting Club as agents, to exterminate carp in the waters in question, he has authority so to do. Such work, of course, should be done under the supervision and control of the Director of Agriculture.

The case of *The East Bay Sporting Club vs. Miller, et al.*, supra, in no wise affects the provisions of this section.

Answering your question specifically, it is my opinion that, by the terms of Section 1447, General Code, authority is vested in the Director of Agriculture, his agents and employes to exterminate carp in any waters of the State. The manner and means of so doing is within the discretion and sound judgment of the Director of Agriculture.

Respectfully,

EDWARD C. TURNER,  
Attorney General.

2048.

BOARD OF EDUCATION—PURCHASE OF FURNISHINGS FOR SCHOOL DISTRICTS—IN CITY DISTRICTS—OTHER DISTRICTS—RULE AS TO COMPETITIVE BIDDING.

SYLLABUS:

1. *When a board of education determines to furnish a school house and the aggregate cost of the furnishings will, in a city district, exceed \$3,000, and in any other district \$1,000, the purchases must be made upon competitive bidding after due advertisement as provided by Section 7623, General Code, even though such furnishings consist of several types or classes of furnishings each of which will cost less than \$3,000 or \$1,000, as the case may be. This must be done regardless of whether or not all the different types or classes of furnishings may be purchased from one dealer or manufacturer, or whether they must necessarily be purchased from different dealers or manufacturers, and whether or not the board desires to provide the furnishings all at one time or at different times.*

2. *In securing bids for furnishings for a school building boards of education are not required to submit to bidders, specifications in minute detail, but may receive bids on specifications general in their nature, setting forth the purpose which the furnishings are intended to serve; and thereafter contracts may be let to the lowest responsible bidder by comparison of the amount of the bids in the light of the quality and utility of the articles upon which the bids are based.*

COLUMBUS, OHIO, May 2, 1928.

HON. WILLIAM B. JAMES, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows: