

The language of section 7645 of the General Code is very broad and therefore includes the boards of education in city districts of the state and exempted village districts, as well as the boards of education which act in conjunction with the county board of education. Section 7645 G. C. is also a later enactment than section 4737 G. C., which reads as follows:

"The county board of education shall publish with the advice of the county superintendent a minimum course of study which shall be a guide to local boards of education in prescribing the course of study for the schools under their control. The county board may publish different courses of study for village and rural school districts."

This section, it will be noted, provides for a "minimum course" which shall be "a guide" to local boards in arranging their course of study, and nothing in the section requires the local board of education to adopt or use the course of study recommended by the county board of education, the inference being that the local board of education was still left with the power of arranging its own course of study. It will be noted, too, that the county board of education, while authorized to recommend courses of study to local boards of education under its jurisdiction, would have no authority to recommend a course of study to be used in the city school districts or the exempted village school districts which might be located in the geographical confines of the county itself. On the other hand, however, section 7645 G. C., very recently amended, does provide that all boards of education must have their course of study approved by the superintendent of public instruction.

The answer to your second question, therefore, is that a course of study could not be prescribed and used legally without being first approved by the superintendent of public instruction.

Your third question is also upon the question of the necessary approval of the superintendent of public instruction before such course of study could be legally adopted or used, and the answer to your third question is the same as to your second question, that is, that all boards of education, under the provisions of section 7645 G. C. must have their courses of study approved by the superintendent of public instruction.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1625.

FISH AND GAME—WATERS OF OHIO RIVER BORDERING STATE OF OHIO WITHIN JURISDICTION OF STATE OF OHIO—LICENSE MUST BE OBTAINED TO HUNT WILD BIRD OR WILD ANIMALS ON SAID RIVER.

The waters of the Ohio river bordering the state of Ohio are within the jurisdiction of the state of Ohio, and persons may not, in view of the provisions of section 1431 G. C., hunt wild birds or wild animals on said river, without first having applied for and received a hunter's and trapper's license.

COLUMBUS, OHIO, October 20, 1920.

HON. A. C. BAXTER, *Chief, Bureau of Fish and Game, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter to this department reading as follows:

"Sportsmen in southern Ohio desire to know whether or not they must have an Ohio license if they hunt on the Ohio river or should the Ohio river be recognized as Kentucky territory."

Section 1431 G. C. says :

"No person shall hunt * * * any wild bird or wild animal * * * *within the state*, without first having applied for and received a hunter's and trapper's license as required herein * * *."

The penalty for a violation of section 1431 G. C. is that set forth in section 1454 G. C., which need not here be quoted.

The phrase "within the state," appearing in section 1431 G. C., clearly means "within the jurisdiction of the state." See *Dickow vs. Cincinnati*, hereinafter cited.

The question, then, is whether the waters of the Ohio river bordering the state of Ohio are within the jurisdiction of the state of Ohio.

This question was fully considered and answered by the circuit court of Columbia county in the case of *State of Ohio vs. William Savors*, 15 O. C. C. (N. S.) 65, reversing *Savors vs. State*, 8 N. P. (N. S.) 228.

The following are extracts from said opinion :

"In 1787 Virginia granted to the United States the Northwestern Territory, she conveyed the territory 'situate, lying and being to the northwest side of the river Ohio.'

Afterwards, in 1802, the state of Ohio was formed from a part of this territory.

No question now exists but what Virginia, by this grant, conveyed to low water mark on the Ohio side of the river (*Handley's Lessee vs. Anthony*, 5 Wheaton, 374), limiting the territorial boundary of the state of Ohio, where it borders on the Ohio river, to low water mark on the northwest side of the river.

Afterwards by the act known as the 'Virginia Compact' of 1789, which proposed the creation of the state of Kentucky, it was provided that :

'The use and navigation of the Ohio river, so far as the territory of the proposed state, or the territory which shall remain within the limits of this commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this commonwealth and of the proposed states on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.' 13 Hening, St. L., 17.

'This compact, by the sanction of Congress, has become a law of the Union. What further legislation can be desired for judicial action?' *Penna. vs. Wheeling & B. Bridge Co.*, 13 Howard, 518-566.

Whether or not by this compact the state of Ohio was given authority to enforce her laws on the Ohio river beyond low water mark, has never been determined by the Supreme Court of this state. In the case of *State vs. Stevens et al.*, 2 Western L. J., 66, the common pleas court of this county held 'that the state of Ohio had criminal jurisdiction on the Ohio river below low water mark.'

This case went to the Supreme Court and was reversed on other grounds, but the jurisdiction on the Ohio river was not considered. *Stevens et al vs. State of Ohio*, 14 Ohio, 386.

This compact, and similar provisions, have been a fruitful source of litigation in other jurisdictions. The Supreme Court of Indiana, after referring to this compact, say:

'A state has jurisdiction to try and punish offenses against its Sunday laws committed by persons engaged in carrying passengers over navigable waters of the United States, lying along its borders, between different points within its territory.' *Dugan vs. State*, 9 L. R. A., 321.

In the case of *Wedding vs. Nieyler*, 192 U. S., 573 (48 Law Ed., 570), the Supreme Court of the United States say:

'Jurisdiction is acquired by an Indiana court by service of process on the Ohio river, on the Kentucky side of the low water mark on the Indiana shore, in view of the conditions contained in the Virginia compact of 1789.'

Mr. Justice Holmes in the opinion in this case, says:

'Concurrent jurisdiction, properly so-called, on rivers, is familiar to our legislation, and means the jurisdiction of two powers over one and the same place.'

The jurisdiction of a state is the sovereign authority to make and the power to execute laws. *Arnold vs. Shields*, 5 Dana, 18-22 (52 Am. Dec., 669-673); *Sanders vs. St. Louis & N. O. Anchor Line*, 97 Missouri, 26 (10 S. W. 593).

Persons, while on the waters of the Ohio river flowing along the boundaries of this state, are amenable to our laws, and the courts of this state have jurisdiction to punish for crimes committed on the waters of the Ohio river."

In the recent case of *Dickow vs. Cincinnati*, Hamilton county common pleas court, reported in the Ohio Law Reporter for September 13, 1920, Judge Mathews, after citing many authorities, says:

"From these decisions and many others that could be cited it is clear that while the state of Kentucky owns the bed of the Ohio river to low water mark on the northwestern shore, its jurisdiction on the waters of the Ohio river is concurrent only with that of the states on the northwestern shore of the river. Ohio has the same authority and control on the waters of the Ohio opposite its shore as Kentucky has, and can legislate on the subject of civil and criminal rights and duties on its waters, and execute such laws thereon to the same extent as Kentucky can. This power or jurisdiction in the state of Ohio is conceded by the plaintiffs in error."

In an opinion rendered June 12, 1915, to the Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio (Opinions of the Attorney-General for 1915, Vol. II, p. 1009), the Attorney-General held that the provisions of section 6324 G. C. that

"A person shall not live in or occupy a boat or watercraft as a place of residence or abode, or for the purpose of engaging in business, trade or traffic on a navigable water or its tributaries within the jurisdiction of this state until there has been granted to such person, by the probate court of the county in which such boat or watercraft shall lie or ply, a license to so live in or occupy such boat or watercraft"

are applicable to boats and watercrafts upon the waters of the Ohio river bordering the state of Ohio.

On page 1010 of said opinion it is said:

"Thus it is clearly settled that the state of Ohio has both civil and criminal jurisdiction over the waters of the Ohio river beyond the territorial limits of the state of Ohio, technically speaking, to-wit the western or northwestern low water mark of said river."

You are therefore advised that the waters of the Ohio river bordering the state of Ohio are within the jurisdiction of the state of Ohio, and that persons may not, in view of the provisions of section 1431 G. C., hunt wild birds or wild animals on said river, without first having applied for and received a hunter's and trapper's license.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1626.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENTS IN FRANKLIN COUNTY, OHIO.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

COLUMBUS, OHIO, October 21, 1920.

1627.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, GEAUGA COUNTY, OHIO.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

COLUMBUS, OHIO, October 21, 1920.

1628.

APPROVAL, ABSTRACT OF TITLE, PREMISES SITUATED IN FRANKLIN COUNTY, COLUMBUS, OHIO, R. P. WOODRUFF'S AGRICULTURAL COLLEGE ADDITION.

COLUMBUS, OHIO, October 21, 1920.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—An examination has been made of an abstract, which was last continued October 11, 1920, by John K. Kennedy, attorney at law, with a view of determining the status of the title to the following described premises as disclosed by said abstract:

Situated in the state of Ohio, county of Franklin, and city of Columbus,