492.

APPROVAL, EIGHT GAME REFUGE LEASES—DISAPPROVAL, ONE GAME REFUGE LEASE.

COLUMBUS, OHIO, June 7, 1929.

HON. J. W. THOMPSON, *Chief, Division of Fish and Game, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval as to form, the following leases which describe lands to be used for State Game Refuge purposes, as authorized under the provisions of Section 1435 of the General Code:

No.	*Lessor.*	*Acres.*
596	Charles J. Wright, Green Township, Hocking County	485
416	Benjamin F. Carpenter, Falls Township, Hocking County	156
405	Edward Iles, Falls Township, Hocking County	114
409	Otto Iles, Falls Township, Hocking County	337
407	Emerson S. Poxton, Green Township, Hocking County	947
2012	Robert J. Bowman and Marguerite Dillhardt, Tymochtee Township, Wyandot County	115
491	A. H. Melick, Madison Township, Perry County	1002
404	Mrs. E. L. Everitt, Falls Township, Hocking County	80

Upon examination I have found the first seven leases above mentioned to be in proper legal form and have endorsed my approval thereon, as to form and return them herewith to you.

I am returning the last mentioned lease without my approval for the reason that the grantor is named as "E. L. Everitt," while the lease is signed by "Mrs. E. L. Everitt." The lease is for a term of five years which necessitates an acknowledgment in order to make it valid and the notary certifies that "E. L. Everitt acknowledged said lease." It is suggested that whoever is the owner of this property, whether Mr. or Mrs. Everitt, should properly sign the lease and acknowledge the same. As it is now executed, it is impossible to determine the status of the matter.

Respectfully,
GILBERT BETTMAN,
Attorney General.

493.

PRISONERS—CONFINED IN COUNTY JAIL WHEN WORKHOUSE NON-EXISTENT—COMMISSIONERS MAY PAROLE CRABBE ACT VIOLATORS—MANAGING OFFICER RELEASES THOSE TRANSFERRED TO MUNICIPAL WORKHOUSES.

SYLLABUS:

1. *County commissioners of a county, not having a county workhouse, may, by virtue of Section 12382 of the General Code, and in accordance with its provisions, release on parole indigent prisoners confined in the county jail for fine and costs alone, imposed for violation of the Crabbe Act.*

2. County commissioners have no authority, under Section 12382 of the General Code, to release prisoners confined in a municipal workhouse where such persons are being maintained under a contract between the county commissioners and the director of public safety of such municipality. Under Sections 4133, et seq., General Code, such prisoners may be released or paroled by the officer authorized by statute to manage such workhouse.

COLUMBUS, OHIO, June 8, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

"In Montgomery County we have no county workhouse. There is, however, a workhouse owned by the city of Dayton and there exists an arrangement between the county and city whereby county prisoners may be committed to the city workhouse.

Due to this situation, the following questions have arisen:

1. Whether Section 12382, General Code, may be used for the release of a prisoner committed to the city workhouse by a county court for violation of the prohibition act.

2. Whether Section 12382, General Code, is available for the release of a prisoner committed to the county jail on a violation of the prohibition law.

3. Whether Section 12382, General Code, could be used for the release of a prisoner committed to the city workhouse by a county court for misdemeanors other than violation of the prohibition law.

These questions arise due to the phraseology of the statute which provides that 'in counties where there is no county workhouse the county commissioners may release on parole an indigent prisoner confined in the jail of such county for fine and costs alone.' It would seem to us as if a prisoner imprisoned in the city workhouse should stand in this county as if confined in the county jail.

Enclosed you will find a copy of the form that has been used in the past for such release and which has been discontinued until we learn how the statute should be interpreted. If you do not feel this statute should be used for releasing prisoners, we would appreciate your suggestions as to what is commonly done in counties in the same situation as we are."

Section 12382, General Code, provides as follows:

"The county commissioners of a county not having a workhouse may, on the written recommendation of the court that has tried the case and the sheriff of the county where the prisoner is confined, release on parole an indigent prisoner confined in the jail of such county for fine and costs alone. The parole in such case shall be in writing, signed by the prisoner so released, and conditioned for the payment for (of) the fine and costs by him in labor or money in installments or otherwise, and shall be approved by the prosecuting attorney of such county, and the provisions of Section 6212-17, General Code, shall not prevent the commissioners from releasing such indigent prisoner as herein provided."

You will note from a reading of Section 12382, General Code, that the county commissioners of a county not having a workhouse may, as provided in this section, release on parole indigent prisoners confined in the jail of such county for fine and

costs alone. The section further provides that the provisions of Section 6212-17 of the General Code shall not prevent the commissioners from releasing such indigent prisoners. Section 6212-17, General Code, provides in part as follows:

> "* * * No fine or part thereof imposed hereunder shall be remitted nor shall any sentence imposed hereunder be suspended in whole or in part thereof."

So that indigent prisoners confined in the county jail for failure to pay fine and costs for violation of the provisions of Sections 6212-13, et seq., which sections are contained in what is commonly known as the Crabbe Act, may be released on parole by the county commissioners of a county not having a workhouse. It is difficult to ascertain, from an examination of a number of earlier statutes relating to workhouses and county jails, the reason for the Legislature authorizing county commissioners of counties that have no workhouses to release on parole prisoners confined in jails of such counties for failure to pay fines and costs, and not giving the same authority to commissioners of counties that have workhouses. Nevertheless, Section 12382 of the General Code is clear and unambiguous in so far as it relates only to prisoners confined in county jails, and the statute is not open to a construction which would extend the authority of county commissioners to release prisoners confined in a workhouse. To hold that county commissioners have authority to release prisoners, by virtue of Section 12382, from a municipal workhouse, where persons are maintained under a contract between the county commissioners and the officers of a municipality, would be to construe the statute to mean that a workhouse, under such an arrangement, is a jail within the terms of Section 12382, General Code. I do not believe that the Legislature intended to give the term "jail" such a meaning. Section 12384 of the General Code authorizes county commissioners of a county which has no workhouse, but contains a city which has a workhouse, to contract with the Director of Public Safety to maintain in the municipal workhouse, at county expense, persons convicted of violations of state law. Section 12389 of the General Code provides that persons sentenced to such workhouse may be kept temporarily in a county jail until the officers can procure the necessary papers and arrange to transport the prisoner to the workhouse. Section 12389, and numerous other statutes of Ohio, refer to a jail and workhouse as two different and distinct places of imprisonment.

In the case of *Ohio Savings and Trust Company* vs. *Schneider,* 25 Ohio App. Rep. p. 263, the court says:

> "It is the duty of courts in their interpretation and construction of statutes to give effect to the intent of the law-making power, and to seek for that intent in every legitimate way. If the words and sentences used are free from ambiguity and doubt, and express the clear purpose and intent of the framers of the law, there is no occasion to resort to other means of interpretation."

Your attention is directed to Opinion No. 419, under date of May 21, 1929, addressed to the Bureau of Inspection and Supervision of Public Offices, in which it was held that the words "remit" and "suspend" in Section 6212-17, General Code, refer only to courts and, therefore, Section 6212-17, does not affect the authority under Sections 4133, et seq., given to an officer authorized by statute to manage a workhouse, to release or parole prisoners confined therein for failure to pay fine or costs imposed for violation of the Crabbe Act, and, therefore, prisoners who are confined in any workhouse for failure to pay fine and costs imposed for violation of the

Crabbe Act may, by virtue of Sections 4133, et seq., General Code, be released or paroled by the officer authorized by statute to manage such workhouse.

In view of the foregoing discussion, I am of the opinion that:

1. County commissioners of a county, not having a county workhouse, may, by virtue of Section 12382 of the General Code, and in accordance with its provisions, release on parole indigent prisoners confined in the county jail for fine and costs alone, imposed for violation of the Crabbe Act.

2. County commissioners have no authority, under Section 12382 of the General Code, to release prisoners confined in a municipal workhouse where such persons are being maintained under a contract between the county commissioners and the Director of Public Safety of such municipality. Under Sections 4133, et seq., General Code, such prisoners may be released or paroled by the officer authorized by statute to manage such workhouse.

Respectfully,
GILBERT BETTMAN,
Attorney General.

494.

TAX AND TAXATION—MOTOR VEHICLE LICENSE AND GASOLINE TAXES—MUNICIPALITY MAY CONSTRUCT STORM WATER DRAINS FROM SHARE OF PROCEEDS.

SYLLABUS:

A city may expend funds which it receives under the provisions of Sections 5537 *and* 6309-2 *of the General Code, as amended by the* 88*th General Assembly, in House Bill No.* 104, *for the purpose of constructing local storm water drains which are installed as a part of the street construction for the purpose of draining such street.*

COLUMBUS, OHIO, June 8, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

> "House Bill No. 104, Mr. Anderson, was passed by the 88th General Assembly and will become effective during the coming summer, unless a referendum petition be filed.
>
> This bill in part provides that the city's portion of the motor vehicle license tax and gasoline tax may be used to construct, maintain and repair their streets and roadways.
>
> QUESTION: May the city's portion of these funds be used for the purpose of constructing storm water sewers which are installed as a part of the street construction and for the purpose of draining such street?"

At the outset, it may be noted that your communication is premised by the statement that House Bill No. 104 will become effective during the coming summer unless a referendum petition be filed. In this connection, it should be mentioned that Section 2 of said act, which amends Section 5527, General Code, expressly levies a tax of two cents on each gallon of motor vehicle fuel sold or used by any dealer within the State of Ohio, and it appears to be clear that this particular section, under the