

my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4573.

FISH—STOCKED IN ARTIFICIAL LAKE OWNED BY MUNICIPALITY—
STATE DOES NOT LOSE TITLE.

SYLLABUS:

The state does not lose its title to and ownership of fish stocked in artificial lakes owned and controlled by municipalities.

COLUMBUS, OHIO, August 18, 1932.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter from William H. Reinhart, Conservation Commissioner, which reads as follows:

“Your formal legal opinion is requested on the following question:

The city of Akron, like most of the other cities of Ohio, including Columbus, obtains its city water supply from an artificial lake, an impounded portion of the Cuyahoga River near Kent in Portage County. This lake was created by the construction of a dam across the valley of a natural watercourse. The city of Akron owns the land surrounding this artificial lake, called Lake Rockwell and its secondary basin called Lake Pippin, though a flow of water enters from above the city property and leaves over the spillway. This body of water has been in existence some time, and since 1919 the State Division of Fish and Game, and more recently its successor, the Division of Conservation, has used this sizable lake as a rearing pond proposition. The lake has been stocked with hatchery fish and fish from Lake Erie, and this Division has reaped an annual harvest of fish for distribution into other waters. Since 1929 this has been done under authorization of the Akron City Council by City Ordinance. During all of this period the lake has been kept closed to public fishing by the City authorities.

At the present time the Akron authorities are considering a proposition made to them by a local organization to remove the control of the fish from the State and sell the privilege in order to obtain revenue. It is our uninformed opinion that the fish in a body of water of this description are exactly of similar status to the fish and game of all of the rest of the waters of the state, namely held in trusteeship by the State for the benefit of the public. The statutes that apply to these fish are the same as those which apply to all fish and game, and it is hardly conceivable to us that by the establishment of a dam across a stream, the land owner wrests the trusteeship of wild life from the state.

Your formal opinion of the legal status of the fish in the waters of

that portion of the Cuyahoga River, where they are impounded by a dam to form the Akron Water Works Reservoir is hereby requested.

Along similar lines the City of Barberton in Summit County has built a water-works reservoir along the small natural stream valley known as Wolf Creek, and the legal status of the fish in this reservoir also needs to be determined for similar reasons."

Section 1391, General Code, is pertinent to your inquiry and reads 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. No person shall at any time of the year take, in any manner, number or quantity, fish, wild quadrupeds or birds protected by law, or buy, sell, offer or expose for sale, the same or any part thereof, transport or have the same in possession, except as permitted by this act; and this prohibition shall be construed as part of each permissive section or part thereof. A person doing anything prohibited, or neglecting to do anything required by this act, with reference to such fish, quadrupeds or birds, shall be deemed to have violated this section. A person who counsels, aids or assists in the violation of a provision of this act (G. C. §§ 1390 to 1454), or knowingly shares in any of the proceeds of such violation by receiving or possessing either a fish, quadruped or bird shall be deemed to have violated this section. Hunting or taking a wild bird or wild game on Sunday is prohibited."

This section provides that the legal title to all fish in Ohio, except fish confined and held by private ownership, is in the state of Ohio in trust for the people of this state. The statute further provides that the possession of fish, except those held by private ownership, can be obtained only in the manner and method provided by law. Fish, in order to be considered as being held by private ownership, must be legally acquired and confined. I am assuming, for the purpose of this opinion, that, at the time these artificial lakes were stocked by the state for propagation purposes, there was no agreement on the part of the state by its agents to pass title to the several municipalities to the fish so stocked and propagated in the several artificial lakes. Section 1391 is dispositive of your inquiry, inasmuch as you state in your letter that these artificial lakes were stocked with fish by the state and not by the municipalities. It is therefore apparent that the fish stocked and propagated in these artificial lakes do not come within the proviso of section 1391 which provides that the state shall not have title to fish held and confined by private ownership legally acquired.

The fact that the artificial lakes are within the control and ownership of the municipalities would not divest the state of its title to fish stocked and propagated in those waters, inasmuch as the same were not legally acquired and confined therein by the several cities. This conclusion finds support in the language of the court in the course of its opinion in the case of *Reid vs. Ross, et al.*, 46 S. W. (2d Ed.) 567 (Mo.), which reads:

"From the facts stated, it must be concluded that the waters of the lake in question are private, as distinguished from public, waters.

As a riparian owner, the respondent has the right of fishery in those waters. 11 R. C. L. 1032. Such right is subject, however, to such regulations, if any, as have been, or may be, imposed by the state. This because the ownership of and title to the fish, until actually reduced to possession at a time and in a manner permitted by law, are in the state."

Your attention is also called to the provisions of section 1418, General Code, inasmuch as your inquiry does not disclose whether or not the artificial lakes have any connection with the rivers mentioned in your letter. Section 1418 reads as follows:

"Fish may be taken in any manner, in the ponds or lagoons formed by the receding waters of any river, when such ponds, or lagoons no longer have any connection with the channels of such streams."

I am therefore of the opinion that the title to the fish stocked and propagated in the several artificial lakes mentioned in your letter is in the state of Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4574.

GASOLINE TAX—GASOLINE SHIPPED THROUGH PIPES TO TANK CARS—WHO DEEMED TO HAVE "RECEIVED" GASOLINE SO AS TO BE SUBJECT TO TAX.

SYLLABUS:

Where motor vehicle fuel is delivered from a refinery by pipe to a licensed dealer into large storage tanks out of which tank car shipments are made, such motor vehicle fuel is deemed to have been received by the owner of the storage tanks when sales or deliveries are made out of such tanks.

COLUMBUS, OHIO, August 22, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I beg to acknowledge receipt of your letter which reads in part as follows:

"In the matter of Refinery operations, Marine Terminal storages and Pipe Line Terminal storages located within the State of Ohio operating under the new Ohio receipts law, effective September 1, 1931, a problem has come to my attention which I believe requires an opinion from the Attorney General of Ohio.

The situation outlined as follows will cover any operation of the above three mentioned plants, which comes to my mind at present, wherein the tax responsibility might be in question. For example, 'A', a licensed refiner selling and delivering motor fuel by pipe line into the storage tanks of 'B', another licensed dealer, would be considered a sale