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GAME PROTECTOR—COMMISSIONER OF CONSERVATION
AND NATURAL RESOURCES—NO AUTHORITY TO APPOINT
AS GAME PROTECTOR INDIVIDUAL NOT AN EMPLOYE OF
SAID DIVISION.

SYLLABUS:

The Commissioner of Conservation and Natural Resources does not have the authority to appoint as a game protector an individual who is not an employe of the Division of Conservation and Natural Resources.

Columbus, Ohio, August 21, 1943.

Hon. Don Waters, Commissioner,
Division of Conservation and Natural Resources,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion asking if you are authorized to invest individuals who are not employes of the

Division of Conservation and Natural Resources, with the authority of a game protector.

At the outset it should be remembered that as a public official you have only such powers as are expressly delegated to you, together with those which must necessarily be implied from those so delegated.

Those sections of the General Code which are pertinent to your inquiry provide in part as follows:

Section 1439.

“* * * The commissioner of conservation and natural resources shall select and employ all employees in the division of conservation and natural resources, including any assistant commissioners of the division of conservation and natural resources, subject to the approval of the conservation and natural resources commission. He shall supervise and direct all duties of all employees and all activities of the division of conservation and natural resources and may discharge, lay off or suspend any employees of the division of conservation and natural resources, but subject to civil service laws and the regulations of the civil service commission. The commissioner of conservation and natural resources and not more than two assistant commissioners, as heretofore provided for, shall be in the unclassified service, and all other employees in the division of conservation and natural resources shall be in the classified service, any provisions with reference to exemptions contained in section 486-8 of the General Code to the contrary notwithstanding.”

Section 1441.

“The law enforcement officers of the division of conservation and natural resources shall be known as game protectors. The commissioner, game protectors, *and such other employes* of the division as the commissioner may designate, and other officers as are given like authority, shall enforce all laws pertaining to the taking, possession, protection, preservation and propagation of wild animals and all commission orders then in effect. * * * Under the direction of the commission, the commissioner shall visit or cause to be visited, all parts of the state and direct and assist or cause to be directed or assisted, *game protectors and other employes* in the discharge of their duties. * * *” (Emphasis the writer’s.)

Section 1442.

“The commissioner, *game protectors and such other employes* of the division of conservation and natural resources as

he may specify, may serve and execute warrants and other processes of law issued in the enforcement of any law or commission order then in effect for the taking, possession, protection, preservation or propagation of wild animals, in the same manner as a sheriff or constable may serve or execute a process, and may arrest on sight and without a warrant, a person found violating any such law or order. * * *” (Emphasis the writer’s.)

Your attention is particularly directed to that part of Section 1441, General Code, above quoted, which provides that “The commissioner, game protectors, and such *other employees* of the division as the commissioner may designate, and other officers as are given like authority, shall enforce all laws pertaining to the taking, possession * * * etc. of wild animals. The *other officers* referred to above being those named in Section 1444, General Code, which provides in part as follows :

“Sheriffs, deputy sheriffs, constables and other police officers shall enforce the laws and the commission orders then in effect for the taking, possession, protection, preservation and propagation of wild animals, and for this purpose shall have the power conferred upon game protectors. * * *”

Thus it appears that the Legislature has specified that only you and certain of your employes, together with the police officers named in Section 1444, General Code, are authorized to enforce the laws relating to the taking, possession, protection, preservation and propagation of wild animals.

Section 1439, General Code, *supra*, only authorizes you to employ and supervise the employes of your division, all but two of whom must be in the classified civil service of the state. I am unable to find any express authority for the appointment of a game protector who is not an employe of the state in any of the statutes relating to your division. Furthermore, the sections of the General Code hereinbefore quoted negative the implication of such authority by providing that the laws relating to wild animals shall be enforced by certain employes of the Division of Conservation and Natural Resources and certain other designated police officers.

In specific answer to your question, it is, therefore, my opinion that the Commissioner of Conservation and Natural Resources does not have the authority to appoint as a game protector an individual who is not an employe of the Division of Conservation and Natural Resources.

Respectfully,

THOMAS J. HERBERT,
Attorney General.