

1004.

APPROVAL, BONDS OF OBERLIN VILLAGE SCHOOL DISTRICT, LORAIN COUNTY—\$61,000.00.

COLUMBUS, OHIO, October 8, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1005.

FISH—CATCHING WITH CERTAIN DEVICES FORBIDDEN—WHEN HOOK AND LINE ALLOWED—USE OF TROT LINES DISCUSSED.

SYLLABUS:

1. *By virtue of the terms of Section 1392, paragraph b, of the General Code, set lines, float lines, spears, grappling hooks, naked hooks, snatch hooks, eel weirs and eel pots may not be used to take fish in the waters of the State of Ohio.*

2. *Hook and line may only be used to take fish in the waters of the State of Ohio by line in hand, or rod in hand, with not more than three baited books attached, or lure with not more than three sets of three hooks each attached.*

3. *Trot lines may be used to take fish in the Lake Erie fishing district and may be used in the inland fishing district by the owner or person having the owner's consent, in that part of the stream bordering on or running through said owner's land, except in lakes, harbors and reservoirs controlled by the State.*

COLUMBUS, OHIO, October 9, 1929.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

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

“There is quite a lot of misunderstanding on Section 1392-B of the Fish and Game laws concerning punctuation of the last sentence which reads as follows:

‘Tipups, trout lines, set lines, float lines, spears, grappling hooks, naked hooks, snatch hooks, hook and line with more than three hooks attached, eel weirs, eel pots, and nets of any kind shall not be used to take fish, except as specifically permitted by this act.’

It states that hook and line with more than three hooks attached shall not be used to take fish, etc. This in itself is clear, but the question arises whether it does not mean that all the other lines mentioned in the reading matter before the hook and line shall not have more than three hooks too.

Those who are inclined to interpret it this way use set lines with even 100 hooks and consider that they are not violating this section. This really does not look fair as a man fishing with a pole and line is not permitted to have more than three hooks attached to it.

I would appreciate your interpretation of this section at your earliest convenience.”

Section 1392, paragraph b of the General Code, is as follows:

"Fish. Fish shall be taken only by angling, unless otherwise specifically permitted by this act. In case a fish is unintentionally taken contrary to the prohibitions or restrictions of a provision of this act, such fish shall be immediately liberated and returned to the water without unnecessary injury. Tipups, trot lines, set lines, float lines, spears, grappling hooks, naked hooks, snatch hooks, hook and line with more than three hooks attached, eel weirs, eel pots, and nets of any kind shall not be used to take fish, except as specifically permitted by this act."

This section clearly prohibits the use of the devices mentioned therein to take fish in the waters of the State of Ohio unless other sections of the fish and game act (108 O. L. Part 1, 577) specifically permit their use. The punctuation in the last sentence of this section aids in ascertaining the intended meaning of this section and to change the punctuation would alter the obvious meaning of the sentence.

In the case of *Trustees vs. White et al.*, 48 O. S. 577, at page 581, the court in the course of its opinion says:

"Now, in construing a statute punctuation may be changed or disregarded. It will not, ordinarily, control unless other means fail. At the same time it is more or less to be relied upon in ascertaining the meaning intended. The presence of a comma, in one place or another, would not be allowed to subvert the obvious meaning of a sentence. On the other hand, it would not, without reason appearing for it, be disregarded."

The Legislature clearly intended to prohibit the use of hook and line with more than three hooks attached thereto, tipups, trot lines, set lines, float lines, spears, grappling hooks, naked hooks, eel weirs, eel pots and nets of any kind for the purpose of taking fish in the waters of Ohio unless the act specifically permits their use. The words "with more than three hooks attached," only relates to hook and line and not to the other devices enumerated in the sentence. This construction is borne out not only by the plain language of this section, but by the other sections of the fish and game act. The first sentence of Section 1392, paragraph b, provides that fish shall be taken only by angling unless otherwise specifically permitted by the act.

Angling or fishing is defined in Section 1390 of the General Code as the taking of fish by line in hand or rod in hand with not more than three baited hooks attached thereto or with lure with not more than three sets of three hooks each attached thereto. This definition excludes fishing by the use of nets.

Section 1425 of the General Code provides that the conservation commissioner shall issue to persons licensed to take fish in the Lake Erie fishing district certain tags for nets, and provides the manner in which these tags shall be attached to the nets. This section further provides that it shall be unlawful for any person to fish in the waters of Lake Erie fishing district with any kind of a net or device other than the following: pound net, gill net, bar net, fyke net, crib net, seine, trot line, minnow net or hook and line limited to three hooks. This statute clearly prohibits in the Lake Erie fishing district the use of the devices enumerated in Section 1390, paragraph b, except trot lines or hook and line with three hooks.

Section 1420 of the General Code provides in part as follows:

"No person shall * * * have in possession * * * in the inland fishing district of this state * * * or catch or kill a fish in such fishing district with what are known as bob lines, trot lines, float lines, or by grabbing with the hands, or by spearing or shooting, or with any other device other than by angling; provided, however, that in the waters of this district, except

those lakes, harbors and reservoirs controlled by the state, a trot line may be used with not more than fifty hooks and no two hooks less than three feet apart by the owner or person having the owner's consent in that part of the stream bordering on or running through said owner's lands."

This section prohibits the use of the devices mentioned in Section 1392, paragraph b, in the inland fishing district of the state, except it permits the taking of fish by angling as defined in Section 1390, General Code, and also permits the use of trot lines by the owner or person having the owner's consent in that part of the stream bordering on or running through said owner's land except in lakes, harbors and reservoirs controlled by the state.

The fishing districts of the State of Ohio include the inland and Lake Erie fishing districts. The provisions of Sections 1420 and 1425 of the General Code mention specifically the devices that may be used to take fish in the Lake Erie and inland fishing districts of the state and prohibit all other devices. The devices prohibited by the terms of Section 1392, paragraph b, General Code, with the exception of trot lines and certain nets, are not specifically permitted to be used to catch fish in the waters of Ohio, but are also prohibited by the other sections of the act.

Section 1420 of the General Code specifically permits the taking of fish by angling in the inland fishing district, that is, the taking of fish with line in hand or rod in hand, with not more than three baited hooks attached, or with lure with not more than three sets of three hooks each attached.

Section 1425 of the General Code permits the use of "hook and line limited to three hooks." "Hook and line," as used in this section, is not specifically defined by the fish and game act.

In an opinion rendered by a former Attorney General, found in Opinions of the Attorney General for 1925, at page 145, "hook and line," as used in the fish and game act, was defined as "line in hand or rod in hand with no more than three baited hooks attached thereto, or line with not more than three sets of three hooks each attached thereto."

I am inclined to agree with my predecessor that this is a correct definition of the term "hook and line", as used in the fish and game act.

Sections 1420 and 1425 of the General Code also permit the use of trot lines in the Lake Erie fishing district and the use of trot lines in the inland fishing district by the owner or persons having the owner's consent in that part of the stream bordering on or running through the owner's land, except in lakes, harbors or reservoirs controlled by the State.

In specific answer to your inquiry, I am of the opinion :

1. By virtue of the terms of Section 1392, paragraph b, of the General Code, set lines, float lines, spears, grappling hooks, naked hooks, snatch hooks, eel weirs and eel pots may not be used to take fish in the waters of the State of Ohio.

2. Hook and line may only be used to take fish in the waters of the State of Ohio by line in hand or rod in hand, with not more than three baited hooks attached, or lure with not more than three sets of three hooks each attached.

3. Trot lines may be used to take fish in the Lake Erie fishing district and may be used in the inland fishing district by the owner or person having the owner's consent, in that part of the stream, bordering on or running through said owner's land, except in lakes, harbors and reservoirs controlled by the State.

Respectfully,

GILBERT BETTMAN,
Attorney General.