

care and such other relief as may be necessary to extend to children who are unable to attend school by reason of the inability of their parents or guardians to furnish the same for them. No such child should be or could be required to pay any incidental fees as a condition precedent to its receiving the benefits of a laboratory course.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

680.

GAME PROTECTORS—NO WAY IN WHICH FEES OR COMMISSIONS  
MAY BE PAID IN ABSENCE OF APPROPRIATION THEREFOR BY  
THE LEGISLATURE.

*SYLLABUS:*

*There is no way in which fees or commissions may be paid to non-salaried game protectors in the absence of appropriation therefor by the legislature.*

COLUMBUS, OHIO, June 30, 1927.

*Department of Agriculture, Division of Fish and Game, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your letter dated June 21, 1927, which reads as follows:

“It has been the custom of the legislature in the past to set up or in other words to appropriate \$10,000.00 for each of the fiscal years as commissions to non-salaried game protectors.

The last General Assembly seemed (saw) fit to abolish these commissions to non-salaried game protectors, and the department would like to be advised at an early date what effect this might have on the non-salaried game protectors.

It is true that no money is paid for commissions until fines are paid in the department complete, then the protector is paid his commission.”

Your attention is directed to the following sections of the General Code:

“Sec. 12378. Unless otherwise required by law, an officer who collects a fine, shall pay it into the treasury of the county in which such fine was assessed, to the credit of the county general fund within twenty days after the receipt thereof, take the treasurer’s duplicate receipts therefor and forthwith deposit one of them with the county auditor.”

“Sec 1445. All fines, penalties and forfeitures arising from prosecution, convictions, confiscations, or otherwise under this act, unless otherwise directed by the Secretary of Agriculture shall be paid by the officer by whom the fine is collected to the Secretary of Agriculture and by him paid into the State Treasury to the credit of a fund which shall be appropriated biennially for the use of the Secretary of Agriculture. All moneys collected as license on nets in the Lake Erie fishing district under this act shall be

paid by the Secretary of Agriculture into the state treasury as a special fund to be used in the betterment and the propagation of fish therein, or in otherwise propagating fish in such district; and for that purpose such fund shall be appropriated biennially, and be paid out upon the order of the Secretary of Agriculture, but shall not be used or paid out for any purpose other than the purposes for which said fund is appropriated."

I am informed that your department appoints a number of non-salaried game protectors who serve without compensation other than a certain percentage of the fines collected in the several cases that they successfully prosecute and that such fees or commissions are not paid to such protectors until the fines are collected from the defendant, received by your department and deposited in the state treasury in accord with the provisions of Section 1445, *supra*.

You will note that by the provisions of Section 1445, *supra*, all fines, penalties and forfeitures arising from prosecutions, convictions, confiscations, or otherwise, under the fish and game laws, unless otherwise directed by the Secretary of Agriculture, shall be paid by the officer by whom the fine is collected to the Secretary of Agriculture and by him paid into the state treasury to the credit of the proper fund.

Such fines, penalties and forfeitures upon being deposited in the state treasury, even though credited to a fund for the use of the Secretary of Agriculture, can only be withdrawn in pursuance of a specific appropriation made by law.

Article II, Section 22 of the Constitution of Ohio, provides:

"No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law; and no appropriation shall be made for a longer period than two years."

Pursuant to this provision of the Constitution of Ohio laws have been enacted providing for biennial appropriations to be made by the General Assembly for the various purposes for which appropriations are made and warrants drawn by the Auditor of State on the state treasury.

The legislature, in former years, appropriated money for the use of your department in order that these so called "commissions" could be drawn from the state treasury and paid to those appointees entitled to receive the same. The 87th General Assembly made no provision in this regard and therefore there will be no moneys available for this purpose after June 30, 1927.

The failure to make the appropriation in itself does not mean the permanent abandonment of this branch of your department and you should act upon the assumption that the means of support or "commissions" for such non-salaried game protectors are temporarily lacking. Salary or commissions are not necessarily an incident of office. In other words, abolishing the salary does not abolish the office.

All the laws now in the General Code applicable to non-salaried game protectors are still in full force and effect, notwithstanding the failure of the legislature to appropriate money for their fees or "commissions."

By the failure of the legislature to provide in the appropriation bill the money necessary for carrying on the activities of this branch of your department, we have a clear declaration of legislative policy to the effect that this branch of your department is to be operated for the ensuing eighteen months, so far as may be, without the use of public funds.

I see no lawful way to escape the situation created except that the non-salaried game protectors appointed by your department shall serve without fees or "commissions".

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*