

442.

APPROVAL, ARTICLES OF INCORPORATION OF THE HOME LODGE  
BENEVOLENT PROTECTIVE ORDER OF ANTLERS OF CLEVELAND.

COLUMBUS, OHIO, May 25, 1929

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the articles of incorporation of Home Lodge Benevolent Protective Order of Antlers of Cleveland, with my approval endorsed thereon.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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443.

APPROVAL, LEASE TO MIAMI AND ERIE CANAL LAND IN LIBERTY  
TOWNSHIP, HENRY COUNTY—ERVIN FOOR.

COLUMBUS, OHIO, May 25, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate executed by you as Superintendent of Public Works, leasing and demising to one Ervin Foor of Napoleon, Ohio, for a term of fifteen years, a parcel of Miami and Erie Canal property located in Liberty Township, Henry County, Ohio, and more particularly described in said lease.

An examination of said lease shows that the same has been executed in conformity with the provisions of Section 13965 and other related sections of the General Code applicable to leases of this kind. Said lease is accordingly hereby approved and my approval is endorsed on said lease and on the duplicate and triplicate copies thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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444.

## GAMBLING—LEGAL METHODS FOR STOPPING.

## SYLLABUS:

*A review of the methods available to local law enforcement officers in dealing with violations of the laws of Ohio against gambling.*

COLUMBUS, OHIO, May 25, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge receipt of your letter of May 20th as follows:

"It has come to my attention that dog races are being held nightly at West Jefferson in Madison County. It is said that a great amount of gambling is going on in connection with these races in violation of law.

Will you kindly advise me as to effective methods which may be used to promptly put a stop to gambling in connection with these races?"

Subsequently in conversation you indicated to me that what you particularly desired was an enumeration of the methods available to local law enforcement officials to cure the situation set forth.

Your letter does not set forth, nor have I the information at hand showing, whether the place at which the alleged gambling is being carried on is located within or without the corporate limits of West Jefferson.

If it be within the corporate limits, the mayor, who is by Section 4250, General Code, made the chief conservator of peace within the corporation, is charged with the responsibility of preventing violations of law, including those against gambling, in this instance. Under the provisions of Section 4268, General Code, the mayor, after proper hearing, may be removed by the governor for gross neglect of duty.

By Section 2833, General Code, the sheriff of each county has the duty of preserving the public peace and accordingly it is his duty, when he has knowledge thereof, to take proper action to secure the punishment of all crimes committed within the county whether within or without the limits of municipal corporations. By Section 2916, General Code, the prosecuting attorney is empowered to inquire into the commission of crimes within the county. That section further makes it his duty to prosecute on behalf of the state all complaints, suits, and controversies in which the state is a party, which would include all criminal proceedings for violations of state laws. It is because of these provisions that the sheriff and prosecuting attorney have been aptly described as the law enforcement officers in the local governmental subdivision of the state—the county.

If, as indicated by your letter, there have been repeated violations of the statutes of Ohio relating to gambling, then there are several quite obvious courses open to these officers which will effectually put a stop to the practice.

Sections 13058, 13059 and 13062, General Code, are all applicable to the situation which you state exists. These sections are as follows:

13058. "Whoever plays a game for wager in an ordinary, tavern, race-field, booth, arbor, out-house or erection connected therewith, or in a public place, or wagers on those so playing therein, shall be fined not more than one hundred dollars."

13059. "Whoever plays a game for money or other thing of value or makes a wager for money or other thing of value, shall be fined not more than one hundred dollars or imprisoned not less than ten days nor more than six months, or both."

13062. "Whoever keeps a room or building, or portion thereof, or occupies public or private grounds with apparatus, books or other device for recording wagers or sells pools upon the result of a trial or contest of skill, speed or power of endurance of man or beast, or, being the owner, lessee or occupant of such room, building or portion thereof, knowingly permits, it to be so used or occupied, or keeps, exhibits, or employes therein a device or apparatus for recording such wagers, or for selling such pools, or becomes the custodian or depositary for hire or reward of money, property or other thing of value so staked, wagered or pledged, shall be fined not less than five dollars nor more than five hundred dollars or imprisoned in jail not less than ten days nor more than six months, or both."

Under these sections it is apparent that those who place bets at the race track are equally guilty of violation of the law with those who are the owners or operators of the place where the betting is done, so that the patrons of the institution could be prosecuted as well as those who maintain it.

Section 13492, General Code, provides that a sheriff, constable, marshal, etc., may arrest and detain any person found violating any law of the State of Ohio.

If the gaming statutes of Ohio are being violated at the race track, any officer mentioned in Section 13492 may arrest and detain every person found violating the statutes of Ohio and detain him until a warrant is obtained.

Under Section 13482, General Code, a justice of the peace, mayor or police judge may issue warrants to search a place for any device or apparatus kept or exhibited for unlawful gaming or money or property won from unlawful gaming.

Section 13486, General Code, provides as follows:

“When the warrant is executed by the seizure of the property or things described therein, such property or things shall be kept by the magistrate to be used as evidence.”

Section 13487, General Code, provides as follows:

“If, upon the examination, the magistrate is satisfied that the offense charged with reference to the things seized has been committed, he shall keep such things, or deliver them to the sheriff of the county, there to remain until the accused is tried, or the claimant’s right is otherwise ascertained.”

It appears to me that a seizure of all gaming devices and all apparatus for gambling and all money won by unlawful gaming by means of a search warrant or search warrants would tend to stop gambling at the race tracks.

Section 13424, General Code, provides that the Probate Court shall have concurrent jurisdiction with the Court of Common Pleas in all misdemeanors and all proceedings to prevent crime.

Section 13441, General Code, provides as follows:

“An indictment is not required in cases in which the probate court has criminal jurisdiction. The prosecuting attorney shall forthwith file an information in such court setting forth briefly, in plain and ordinary language, the charges against the accused, and he shall be tried thereon.”

Section 13443, General Code, provides:

“The prosecuting attorney of a county may file an information in the probate court without a preliminary hearing before an examining court, upon the proper affidavits being filed therein and the probate court shall issue a warrant for the arrest of the defendant named therein.”

Under these sections the prosecuting attorney, in order to expedite the trial of persons charged with violating the statutes of Ohio, may file an information before the Probate Court of the county in which the offense is committed. However, for violation of the statutes of Ohio where imprisonment is part of the penalty, the accused is entitled to a trial by jury, if he demands it, and a demand for jury trial would delay somewhat the disposition of the case.

In addition to prosecution by way of information in the Probate Court, con-

current jurisdiction exists in the Common Pleas Court, in which case the prosecution would be based upon an indictment returned by the grand jury.

By the terms of Section 13568, General Code, the court may, when necessary, call a special grand jury in case the regular grand jury has been discharged. Apparently, therefore, there is no assurance of prompt action or that a person held to the grand jury would be promptly tried, since the matter of an indictment would depend upon the grand jury, and if the regular grand jury had been discharged, the calling of a special grand jury would be dependent upon the discretion of the trial court.

No attempt has been made to review the jurisdiction in this class of cases conferred upon justice's courts, mayor's courts and municipal courts, where such exists. All of these courts have jurisdiction in some respect with regard to prosecutions of this character. A detailed consideration of this subject would, however, not be profitable. Neither have I given any consideration to the authority of a constable which, in criminal matters, is co-extensive with the county.

The foregoing constitutes a summary of the usual and ordinary means available to remedy a situation such as you describe.

Without attempting an exhaustive review of every means open to county law enforcement officers to stop gambling, sufficient has been set forth to show that under the statutes of Ohio these officers are fully armed with the means and the various courts are clothed with the jurisdiction to enforce effectually the laws of Ohio against gambling.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

445.

FLEMING ACT—SECTIONS 3699a TO 3699-9, GENERAL CODE—CONSTITUTIONAL—RIGHTS OF STATE, CITY OF CLEVELAND AND LITTORAL LANDOWNERS IN WATERS AND SUBMERGED LANDS OF LAKE ERIE, DISCUSSED.

SYLLABUS:

1. *The title to all lands lying under the waters of Lake Erie, or which originally lay under the waters of Lake Erie, rests in the State of Ohio in trust for the people for the purpose of navigation and water commerce. The trust under which such property is held is governmental and the state, as the trustee for all of its people in the use of such lands, cannot abandon or abdicate a trust property or permit a diversion to private use different from the object for which the trust was created.*

2. *The Fleming Act (Sections 3699a—3699-9, inclusive, of the General Code) is valid and constitutional and impairs no property rights of shore owners.*

3. *The State's title to lands now or formerly submerged cannot be effectively surrendered or alienated so as to preclude subsequent use by the state when necessary to carry out the continuing trust for the purpose of navigation and water commerce.*

4. *Rights of shore owners of access to navigable water and to wharf out are always subject to be defeated by the assertion of the paramount title of the state when necessary in furtherance of the trust.*

COLUMBUS, OHIO, May 27, 1929.

HON. F. W. THOMAS, *City Clerk, Cleveland, Ohio.*

DEAR SIR:—This is to acknowledge the receipt recently of a copy of a resolution