

2263.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN HAMILTON,
BUTLER AND OTTAWA COUNTIES AND FINAL RESOLUTIONS FOR
IMPROVEMENT IN LUCAS COUNTY.

COLUMBUS, OHIO, August 26, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

2264.

LEASE—PRESCRIBED FORM FOR GAME REFUGE.

SYLLABUS:

Form of lease for game refuge prescribed.

COLUMBUS, OHIO, August 28, 1930.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication requesting approval of a form of state game refuge lease which will conform to the new conservation laws of Ohio.

Upon careful examination of amended Senate Bill No. 265 (113 O. L. 551-592) containing the new conservation laws, I am of the opinion that the old form which you enclosed, with the exception of a few changes hereinafter noted, will suffice.

At the top of the old lease, the words "DIVISION OF FISH AND GAME" should be changed to "DIVISION OF CONSERVATION."

Section 1438-3, General Code, provides, so far as pertinent, as follows:

" * * * and all powers and duties in regard to fish and game now vested in the director of agriculture or the department of agriculture, shall be transferred to and vest in the division of conservation; * * * "

Immediately below, the word "Chief" following the name of John W. Thompson, should be changed to "Commissioner." Section 154-6, General Code, provides in part, that:

"Offices are created within the several departments as follows:

* * * *

In the department of agriculture: Conservation commissioner.

* * * * "

In the fourth line of the lease, the words "Director of Agriculture" should be changed to "the Conservation Council." Section 1435, General Code, provides that:

"The *conservation council* may for a specified period of years prohibit or recall the taking of birds, fish and wild animals, * * ' (Italics the writer's).

It is to be noted that the Legislature changed the words "Director of Agriculture" to "Conservation Council" when the section was amended (113 O. L. 580).

On page 2 of the lease, the paragraph beginning, "It is the desire and intent of the parties hereto that the State of Ohio," should continue as follows:

"through the Conservation Council, establish and maintain on the premises herein leased a game and bird refuge, in accordance with the authority conferred by Sections 1435, 1438-1 and other pertinent sections of the General Code of Ohio."

Clause (a) should read:

"That the Conservation Council, or any person by it authorized, may at any time enter upon said premises for the purpose above stated, and may erect and maintain thereon suitable fences, sign posts, buildings, structures or any device which said Conservation Council deems necessary," etc.

Clause (b) should read:

"That said Conservation Council, or any person by it authorized," etc.

The signature of the lessee should be as follows:

STATE OF OHIO
By Conservation Council
Acting by and through -----
Commissioner

In my opinion No. 1595 rendered to you under date of March 7, 1930, I held in the syllabus:

"Leases of State lands adjacent to the reservoirs mentioned in Section 471, General Code, should be executed on behalf of the State of Ohio by the Conservation Commissioner. Leases of such other state lands as, under the provisions of Section 472-1, General Code, are within the jurisdiction of the Conservation Council, should be executed in such manner as the Conservation Council may by resolution direct."

In the course of the opinion, at page 13, I said:

"The Conservation Council can act only as a board, and leases of state lands within its jurisdiction for the purpose, may be executed in such manner as it may by resolution direct."

It is suggested that a permanent resolution be passed by the Conservation Council, authorizing the Conservation Commissioner to execute the leases for it. Such resolution should be duly entered on the journal of the Conservation Council.

I am returning the old form to you herewith, with the corrections noted herein.

Respectfully,

GILBERT BETTMAN,
Attorney General.