

conveyed to Rosa Arnold by a deed dated March 29, 1906, and recorded in Deed Book No. 83 at page No. 413 of the Scioto County Records;

The said EXCEPTED 25 acres parcel being described therein as follows:

BEGINNING at a white oak corner of Daniel Thatcher's land;

Thence, running with line of said Survey about 100 yards to a drain above the School House;

Thence, up to the top of the Ridge between Kinney Hollow and Old House Hollow;

Thence around the Ridge to the line of Williams land;

Thence with said line back to the beginning, containing land on Kinney Hollow.

Being about 25 acres and Survey No. 16090 as the same is described in above deed of Philip Arnold to Rosa Arnold.

From my examination of the abstract of title submitted to me, I find that said R. T. Lawson has a good and merchantable fee simple title to the above described lands, free and clear of all liens and encumbrances, except the taxes for the year 1928, the amount of which is as yet undetermined. These taxes are now a lien on said premises.

I have examined the warranty deed submitted with said abstract and find the same to be properly executed and acknowledged by said R. T. Lawson and Essie M. Lawson, and said deed is in form sufficient to convey to the State of Ohio a fee simple title to said lands free and clear of all encumbrances whatsoever.

I have examined encumbrance estimate No. 3382, relating to the purchase of the above described lands, and find the same to be in proper form showing that there are unencumbered balances in the appropriation account sufficient to pay the purchase price of said property. I note, however, that although said encumbrance estimate is signed by the Bursar and the Director of Department, the same has not been signed by the Director of Finance, who alone is authorized to certify that there are unencumbered balances legally appropriated sufficient to pay for said property; and the approval of this department of the proceedings relating to the purchase of this property is subject to the requirement that the signature of the Director of Finance be secured to said encumbrance estimate.

With said encumbrance estimate there is submitted a copy of a certificate, over the signature of the Secretary of the Controlling Board, showing that the purchase of this property has been approved by said board.

I herewith return to you said abstract, deed, encumbrance estimate and Controlling Board certificate.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2038.

MUSKRAT FARM—WHAT CONSTITUTES SAME IS QUESTION OF FACT
—FACTS TO BE CONSIDERED.

SYLLABUS:

1. *What constitutes a muskrat farm or enclosure, within the terms of Section 1398, General Code, is a question of fact to be determined from all the facts and circumstances in each particular case.*

2. In determining what constitutes a muskrat farm or enclosure, the following facts among others, should be considered: (1) whether or not the land, on which the "farm" or enclosure is situated be owned or leased or otherwise under the control of the proprietor of such "farm"; (2) whether or not a bona fide intent exists to utilize such land for the purpose of raising and propagating muskrats; (3) whether or not a suitable fence surrounds the farm, although a fence is not absolutely essential; (4) whether or not adequate provision, either natural or artificial, be made for feeding; (5) whether or not the land on which the farm is situated, either in its natural state or with such improvements as may be placed thereon by the owner of the farm, is adapted to use as a muskrat farm; (6) whether or not the owner thereof restocked his "farm," if necessary, with new animals; (7) whether or not the owner thereof held himself out to the public as a breeder and raiser of muskrats, and (8) whether or not the owner thereof regularly marketed his product.

COLUMBUS, OHIO, April 30, 1928.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge your letter dated April 20, 1928, which reads as follows:

"A question has arisen in this county as to the interpretation of the second paragraph of Section 1398, General Code of Ohio, in regard to that part of said section under paragraph A, which excepts the owner of a farm or enclosure used exclusively for the breeding and raising of raccoon, skunk, mink, fox, muskrat or opossum therein, from taking or killing such animals, or any of them at any time.

The situation we have here is in the case of a privately owned strip of marsh land bordering on the waters of Lake Erie, in which muskrats live and which is not enclosed so that said rats are unable to get out of said marsh land and they may come and go and said marsh land is also used for hunting wild ducks and geese and there are streams running from the Lake through said marsh and the owners fish from said streams and said rats may come and go from the Lake proper into said streams.

The owners of said marsh, I am informed, take the position that they may kill said muskrats out of open season or whenever they so desire, claiming that they come under the above exception of the law in that they are the owners of a farm or enclosure used exclusively for the breeding and raising and so forth.

It has been my contention that according to the above statement of facts they do not come within said exception of the law in that they are not the owners of a farm or enclosure used exclusively for the breeding and raising of the animals or any of the fur bearing animals enumerated under said exception.

Would you kindly give me your opinion as to what a farm or enclosure used exclusively for the breeding and raising of said fur bearing animals as enumerated in said exception, means or covers under said section."

The question that you present was considered in a recent opinion of this office, being Opinion No. 1942, dated April 7, 1928, addressed to the Department of Agriculture, Division of Fish and Game, the syllabus of which reads:

"1. What constitutes a muskrat farm or enclosure, within the terms of Section 1398, General Code, is a question of fact to be determined from all the facts and circumstances in each particular case.

2. In determining what constitutes a muskrat farm or enclosure, the following facts, among others, should be considered: (1) whether or not the land, on which the 'farm' or enclosure is situated be owned or leased or otherwise under the control of the proprietor of such 'farm'; (2) whether or not a *bona fide* intent exists to utilize such land for the purpose of raising and propagating muskrats; (3) whether or not a suitable fence surrounds the farm, although a fence is not absolutely essential; (4) whether or not adequate provision, either natural or artificial, be made for feeding; (5) whether or not the land on which the farm is situated, either in its natural state or with such improvements as may be placed thereon by the owner of the farm, is adapted to use as a muskrat farm; (6) whether or not the owner thereof restocked his 'farm', if necessary, with new animals; (7) whether or not the owner thereof held himself out to the public as a breeder and raiser of muskrats, and (8) whether or not the owner thereof regularly marketed his product."

The above opinion, a copy of which I am herein enclosing, is determinative of the question which you present.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2039.

BRIDGE—FOREIGN CORPORATION OPERATING SAME AND ENGAGED
SOLELY IN INTERSTATE BUSINESS—TAX OBLIGATIONS.

SYLLABUS:

A foreign corporation, engaged solely in interstate commerce in the operation of a bridge over the Ohio River, is not subject to, or required to comply with, the provisions of Sections 178 to 182, inclusive, or Sections 183 to 188, inclusive, of the General Code. Such a corporation is not, however, thereby relieved of the obligation to pay franchise taxes in accordance with law.

COLUMBUS, OHIO, April 30, 1928.

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

DEAR SIR:—This will acknowledge your recent letter in which you ask my consideration of certain questions raised by a letter from attorneys representing two bridge companies which are both foreign corporations engaged in interstate commerce in the operation of bridges over the Ohio River. The letter you enclose is as follows:

"Our attention is called to Section 188 of the Ohio General Code, which exempts from the provisions of Sections 183 to 187, inclusive, foreign corporations engaged in interstate commerce. We have previously domesticated the two above named companies in Ohio, and paid license taxes and entrance fees thereon. Our first impression is that this was done needlessly and erroneously as both companies are engaged exclusively in interstate commerce.

We assume that the Attorney General of Ohio has made rulings upon this question and that you are familiar with same. We, therefore, request that you inform us of your attitude toward the future withdrawal of these corporations from Ohio.