

This item appropriates moneys derived from the motor vehicle license tax, taxes from motor transportation companies and the two cent gasoline tax, all of which funds were raised for and appropriated to be used for the purpose of maintaining roads in the state highway system. And so also with reference to the appropriation contained on page 49 of House Bill No. 502, namely :

“G. Additions and Betterments—There is hereby appropriated to the State Highway Improvement Fund the State's portion of revenues derived under H. B. No. 206, 87th General Assembly of Ohio.”

which item appropriates the moneys derived and to be derived from the new one cent gas tax, the moneys contained in this last appropriation being from taxes imposed for and appropriated for the purpose of constructing state highways and eliminating grade crossings thereon. There are other specific appropriations to your department which could not be used for the purpose of paying the cost of the surveys under consideration, but these need not be set forth in this opinion.

It is sufficient to say that the Legislature has seen fit to add certain duties to your department in addition to the duties formerly imposed thereon, as was within its power, and that any general appropriations made to your department for the purpose of carrying out the duties of the department generally, may lawfully be used to pay the cost and expenses entailed in performing these additional duties.

Answering your question specifically, it is my opinion that, under the provisions of Sections 14153-5 and 14153-6, it is your duty, as soon as it may be practicable, to cause surveys to be made of that portion of the Miami and Erie Canal abandoned by the provisions of Amended Senate Bill No. 39 (112 v. 388-390), together with maps and plans of the same, and further, to make a plat or plan showing the proposed highway, its length, grades and width and so much of the canal property as may be used for such highway purposes. In carrying out the provisions of Section 14153-5 and 14153-6, General Code, you are authorized to use the general appropriations made to your department for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation that may be necessary to accomplish the duties of the Director of Highways in carrying out the directions of the Legislature.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1975.

MINNOW DEALER—SALE OF MINNOWS—LIMIT.

SYLLABUS:

1. *By the terms of Section 1414-1, General Code (112 v. 255), a minnow dealer is prohibited from selling to any one person more than one hundred minnows in any one day.*

2. *By the terms of Section 1390, General Code, the word "person" as used in Section 1414-1, General Code, should be construed to include any company, partnership, corporation or association, also any employe, agent or officer thereof.*

COLUMBUS, OHIO, April 16, 1928.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads:

"With reference to General Code 1414 and 1414-1, is a person with a minnow dealer's permit allowed to sell more than one hundred minnows in a day to another that also has a minnow dealer's permit?"

On April 21, 1927 (112 v. 255), the Legislature passed an act entitled:

"An Act—To amend Section 1414 and supplement Section 1414-1 of the General Code, relative to minnow fishing, and amend Section 1454 of the General Code, relative to penalties for violation of fish and game laws." These sections, in so far as pertinent to your inquiry, read:

Sec. 1414. "Minnows. a. In the inland fishing district seining for minnows is prohibited from the first day of May to the fourteenth day of June, both inclusive, except in streams, in which the average width of water at the time seined, does not exceed twelve feet for a distance of fifty yards above and below the point seined. In such districts no person shall take, catch, buy or sell minnows, except for bait and the taking, transporting or shipping of minnows out of the state is prohibited. In the inland fishing districts of the state no minnows shall be taken or caught except with a minnow seine not exceeding four feet in depth and eight feet in length and in the Lake Erie fishing district no minnows shall be taken with a minnow seine exceeding thirty feet in length. No person at any time, in the inland fishing district, shall have in his possession either alive or otherwise more than one hundred (100) minnows, excepting persons, firms, associations or corporations buying, selling or dealing in bait, which person, firms, association or corporations must be licensed as provided in Section 1414-1."

Sec. 1414-1. "Minnow Dealer's Permit. Each person, firm, partnership, association or corporation who buys, sells or deals in minnows is required to obtain, annually, from the director of agriculture a permit, and operate under such rules and regulations as the director of agriculture is hereby empowered to prescribe. Such permit shall be issued upon application and the payment of a fee of five dollars. It is further provided that such dealers shall not have in possession more than four thousand minnows at any one time, *nor sell to any one person more than one hundred minnows in any one day.*" (Italics the writer's.)

Sec. 1454. "Fines; Imprisonment. * * * Whoever violates the provisions of Section 1414-1, * * * of this act shall be fined not less than one hundred dollars nor more than five hundred dollars and costs of prosecution. Whoever violates the provisions of Section 1414 of this act shall be fined not less than ten dollars nor more than one hundred dollars. * * *"

Your attention is directed also to Section 1390, General Code, which, in so far as pertinent, provides:

"Sec. 1. Definitions. Words and phrases as used in this act (G. C., Sections 1390 to 1454) shall be construed as follows:

* * * * *

Person: Includes company, partnership, corporation or association, also any employe, agent or officer thereof."

* * * * *

Sell and sale: Barter, exchange, giving away and offering or exposing for sale. * * *

By the plain and unambiguous language of Section 1414-1, supra, minnow dealers "shall not * * * sell to any one person more than one hundred minnows in any one day." As provided by Section 1390, supra, the word "person" shall be construed to include any company, partnership, corporation or association, also any employe, agent or officer thereof.

In view of the language used in the sections of the General Code herein referred to I am of the opinion that a minnow dealer may not legally sell to any one person more than one hundred minnows in any one day. The fact that the vendee also is a minnow dealer would not constitute a defense to a prosecution of the vendor instituted under Section 1454, supra, charging such vendor with selling more than one hundred minnows to any one person in any one day.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1976.

FIREMEN'S PENSION FUND—SELECTION OF TRUSTEES—AUTHORITY UNDER CHARTER—MANDATORY DUTY OF MUNICIPALITY.

SYLLABUS:

1. *The council of a city, if vested with full legislative power by charter and not otherwise restricted by charter, may provide by ordinance a method of selecting a board of trustees of a firemen's pension fund at variance with that prescribed by general law.*

2. *It is not the mandatory duty of a municipality to levy a tax under authority of Section 4605 of the General Code for the maintenance of a firemen's pension fund theretofore established in such municipality.*

3. *Failure of a member of a fire department to make voluntary contributions to the firemen's pension fund, in accordance with the rules and regulations of the trustees thereof, does not in any way affect his right to participate in such fund in so far as it is derived from sources other than voluntary contributions.*

COLUMBUS, OHIO, April 16, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your recent communication in which you make several inquiries relative to municipal firemen's pension funds. You first quote Section 2 of the Charter of the City of Cleveland, which reads as follows: