

state a black bass whether caught in either of the fishing districts of the state or caught outside of the state. Each black bass so bought, sold, offered or exposed for sale, bartered, given away or had in possession or unlawfully caught shall constitute a separate offense."

It appears to me that the intention of the Legislature to prohibit the sale of black bass is clear and manifest. Applying the rule of statutory construction, if the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to that purpose.

It may be urged that this being a penal statute it should be strictly construed. While penal statutes are to be construed strictly so as not to be extended beyond their terms, they are also to be construed fairly in accordance with expressed legislative intent.

Therefore, I am of the opinion that a fair construction of Section 1412 (d) of the General Code of Ohio prohibits the purchase, sale or offering for sale, bartering, giving away or having in possession for such purpose any black bass, rock bass, calico or strawberry bass, crappie, blue gill or sunfish caught in the Lake Erie fishing district of the State of Ohio or in the inland fishing district of Ohio, or outside of the State of Ohio. Since Section 1412 (d) of the General Code of Ohio prohibits the possession of black bass for the purpose of sale, the facts set forth in your second question necessarily constitute a violation of that section.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

258.

ENGINEER—EMPLOYED BY VILLAGE UNDER CONTRACT—QUESTION OF FACT WHETHER SUCH ENGINEER IS AN OFFICIAL—EMPLOYMENT OF A FIRM DISCUSSED.

*SYLLABUS:*

1. *Whether or not one employed to perform engineering services for a village is an official depends upon the nature of the resolution fixing his employment and the character of the duties which he is to perform. In other words, it is a question of fact to be determined from all of the circumstances.*

2. *A firm of engineers may not be employed in such a manner that the individual members of the firm will be regarded as village officers. Section 4364 contemplates the employment of but one engineer as an official and it follows that a number of engineers could not be employed under the provisions of the section. However, in the event the council contracts with a firm to furnish certain engineering services, as distinguished from the supervisory duties of the official engineer, or the street commissioner, such action is within its powers.*

COLUMBUS, OHIO, April 3, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads as follows:

"The council of the village of ----- passed a resolution determining to enter into a contract with an individual for engineering services and fixing compensation to be paid at a rate per cent of the cost of improvements planned and supervised by such engineer. Council did not create the position or office of engineer whose duties are provided for in Section 4364 G. C.

*QUESTIONS:*

1. In view of the decision of the Supreme Court in the case of *Wright vs. Clark*, Case No. 21080, decided December 19, 1928, is such engineer an officer within the meaning of Section 3808, G. C.?

2. If a firm of engineers is employed by contract to render engineering services to the village, are the members of such firm officers within the meaning of Section 3808 G. C.? Opinion No. 1896 dated March 26, 1928, may be pertinent."

The syllabus of the case to which you refer is as follows:

"1. The engineer of a city or village is an officer within the meaning and intent of Section 3808, General Code, and therefore inhibited from becoming interested in the expenditure of money of the corporation other than payment of his fixed compensation.

2. Sections 4364 and 4366, General Code, create the office of engineer of a municipality and define the powers and duties of such office.

3. Neither fraud, nor conspiracy, nor unreasonable profits, are necessary elements of a cause of action for recovery of money from an officer of a city or village, under the provisions of Section 3808, General Code."

It is believed that the case above referred to establishes no new rule in reference to an engineer being an officer of the village if the facts indicate that he was so appointed or employed.

In an opinion of the Attorney General, found in the Opinions of the Attorney General for the year 1925, page 730, it was held as disclosed by the syllabus:

In an opinion of the Attorney General, found in the Opinions of the Attorney General for the year 1925, page 730, it was held as disclosed by the syllabus:

"An engineer employed under Section 4364 of the General Code is an officer of a village and as such officer Section 3808 of the General Code would make it illegal for him to be interested in the expenditure of money on the part of the corporation other than his fixed compensation."

An examination of the opinion discloses that the opinion of the then Attorney General was based upon the same facts as were before the Supreme Court in the *Wright* case. In examining the decision of the court in said case it will be observed that the court in its conclusions gave much weight to the specific language of the resolution making the employment. The following is quoted from said resolution:

"Be it resolved by the council of the village of Bedford, State of Ohio.

Section 1. That B. T. Wright, be and he is employed as engineer for said village for the years 1924 and 1925, upon the following terms and conditions."

It will be observed that said resolution expressly provides that B. T. Wright be employed as engineer for said village. In the opinion the court points out that in the exercise of the duties in connection with his employment he used letter heads of

the village on which there was printed "B. T. Wright, City Engineer." It is further pointed out by the court that in certifying the vouchers to council for payment he signed the same as "Village Engineer." Also in many other instances he used the same designation in connection with his signature in the performance of his duties under the contract of employment. In view of the facts, the court rightfully held that such employment constituted him an officer of said village, and therefore he was subject to the provisions of Section 3808 of the General Code.

Your communication raises the question as to whether or not an employment of an engineer or a firm of engineers may be made in such a manner as to prevent the person employed from becoming an officer. In other words, the question is presented as to whether the municipality may contract for engineering services in lieu of or in addition to those services provided for by Sections 4364 and 4366, General Code, which sections read :

Sec. 4364. "Under the direction of council, the street commissioner, or an engineer, when one is so provided by council, shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wards, landings, market houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship channels, streams, and water courses. Such commissioner or engineer shall also supervise the lighting, sprinkling and cleaning of all public places, and shall perform such other duties consistent with the nature of his office as council may require."

Sec. 4366. "In each municipal corporation having a fire engineer, civil engineer or superintendent of markets such officers shall each perform the duties prescribed by this title and such other duties not incompatible with the nature of his office as the council by ordinance requires, and shall receive for his services such compensation by fees, salary or both as is provided by ordinance."

In Opinion No. 1896 of the Attorney General for the year 1928, it was held, as disclosed by the first branch of the syllabus :

"The council of a village has, unless limited by charter, authority to enter into a contract with a firm of engineers for the performance of engineering services in connection with local improvements, compensation therefor to be made upon a percentage basis of the cost of the improvement."

This opinion contains a comprehensive discussion of the question of employment of engineers by a village. It is pointed out therein that there are no statutory provisions authorizing the contracting for the services of engineers as contradistinguished from the employment of a village engineer under Section 4364. However, the opinion points out that in view of the so-called home rule powers granted to municipalities by Section 3 of Article XVIII of the Constitution of Ohio, such power exists. In connection with said discussion, it is pointed out that the Supreme Court has frequently held that it is unnecessary for a municipality to adopt a charter in order to exercise such powers. It is further pointed out that in the case of *Perrysburg vs. Ridgway*, 108 O. S. 245, among other things, it is held :

"The power to establish, open, improve, maintain and repair public streets within the municipality, and fully control the use of them, is included within the term 'power of local self government.'"

The following is quoted from Opinion No. 1896, rendered by the Attorney General to your Bureau under date of March 26, 1928, in connection with his comments upon the holding of the Perrysburg case as above quoted :

"The reasoning and logic of the opinion in this case is in my opinion decisive of the question in this instance. Certainly the method of the improvement of streets is a matter of local self-government and, if the municipality sees fit so to do, I think it well within the home rule power to provide for the supervision of its local improvements by contract instead of by the creation of an office and the appointment of an officer for this purpose. The right to contract, subject to certain limitations, is inherent in public as well as private corporations."

The opinion of the Attorney General last referred to clearly pointed out that there is a recognized distinction between making an employment of a village engineer acting in the capacity of a village officer and the making of a contract whereby a person or firm agrees to furnish engineering services to the village.

The question was again considered by the Attorney General in Opinion No. 2660, rendered to your Bureau under date of October 1, 1928. The syllabus of said opinion is as follows :

"A firm of engineers may be employed by a village council to do all engineering work in connection with village improvements."

This opinion points out in the body thereof that there is no definite obligation placed upon the council to provide for a village engineer under Section 4364 et seq., and in the event no such provision is made, the street commissioner is to perform the duties otherwise vested in the engineer. The opinion further points out that the duty of supervision imposed by Section 4364 of the General Code upon either the street commissioner or the engineer does not necessarily require the actual performance of engineering service in connection with village improvements. It is further pointed out therein that the duties of an engineer, when so employed, and of the street commissioner in the absence of such employment, may include the performance of such engineering service if the council requires it. Said opinion further expressly indicates that notwithstanding the services which may be required to be performed by the village engineer or the street commissioner, council may in its discretion enter into contracts with others to perform engineering services so long as the supervision of the improvement remains in either the street commissioner or engineer. In other words, this opinion clearly recognizes the distinction between the duties of the engineer or street commissioner in a supervisory capacity and the right of a municipality to make a contract for engineering services without trespassing upon the function of said village officials. This opinion, as did the opinion of 1925 hereinbefore referred to, clearly recognizes a village engineer as an officer of the corporation when employed in such capacity.

In view of the foregoing, it will be seen that it is a question of fact in each case to determine the intent of council from the language used in its resolution of employment. If the language is similar to that which was used in the Wright case, indicating that the party employed is to act in the capacity of village engineer, clearly one so employed would be a village official. On the other hand, if language is used sufficient to indicate that the party or firm employed is to act under a contract to furnish certain engineering services the same as the purchasing of any commodity by means of a contract, and that the party so employed is not to exercise the supervisory

functions of a village engineer or street commissioner, one so employed would not be an officer.

Based upon the foregoing citations and discussions, you are specifically advised that:

1. Whether or not one employed to perform engineering services for a village is an official depends upon the nature of the resolution fixing his employment and the character of the duties which he is to perform. In other words, it is a question of fact to be determined from all of the circumstances.

2. A firm of engineers may not be employed in such a manner that the individual members of the firm will be regarded as village officers. Section 4364 contemplates the employment of but one engineer as an official and it follows that a number of engineers could not be employed under the provisions of the section. However, in the event the council contracts with a firm to furnish certain engineering services, as distinguished from the supervisory duties of the official engineer, or the street commissioner, it is believed said action is within its powers.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

259.

EXPENSES—COUNTY COMMISSIONERS MAY BE REIMBURSED FOR HIRING SURVEYOR'S AUTOMOBILE TO ATTEND A HIGHWAY DIRECTOR MEETING—EXCEPTION—NO REFUND TO CLERK OF BOARD OF COMMISSIONERS AND SURVEYOR.

**SYLLABUS:**

1. *County commissioners are entitled to the reimbursement of expenses incurred for the hire of an automobile to transport them to a meeting called by the highway director, authorized by Section 1183-1 of the General Code, and it is immaterial whether they have the county surveyor or anyone else transport them, if such expenditure is actual and necessary. However, in counties where county commissioners have purchased automobiles in accordance with Section 2412-1, General Code, the county officials are required by Section 2412-2, General Code, to use these vehicles in lieu of hiring vehicles unless the county vehicles are not available.*

2. *The clerk of the board of county commissioners is not, by virtue of Section 1183-1, General Code, nor of Section 2786, General Code, entitled to reimbursement for expenses incurred in attending a meeting of district deputy directors and county commissioners, as authorized by Section 1183-1, General Code.*

3. *A county surveyor is not, by virtue of Section 1185-1, General Code, entitled to reimbursement for expenses incurred in attending a meeting of district deputy directors and county commissioners, as authorized by Section 1183-1, General Code.*

COLUMBUS, OHIO, April 3, 1929.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your letter of March 1, 1929, received by this office, is as follows:

“Will you kindly furnish me with an opinion on the following question:

Can an election county official legally charge for his services or for the use of his automobile in transporting other county officials to and from such meetings as they may attend in the legal discharge of their duties?