

named. Hence this general section, Section 1397, can only refer to the squirrels named in the definition of game quadruped.

I, therefore, conclude that red squirrel is not protected by the Game Code."

I concur in the conclusions reached by my predecessor in the letter above referred to.

In view of the foregoing and answering your question specifically I am of the opinion that red squirrels are without the prohibitions and restrictions of the Game Laws of Ohio and therefore may lawfully be hunted, taken and possessed at any time of the year.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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999.

BOND ISSUE—ISSUE AUTHORIZED IN 1923 BUT NEVER ISSUED BECAUSE OF TAX LIMITATIONS MAY NOW BE ISSUED—PROCEDURE OUTLINED.

SYLLABUS:

1. *A \$600,000.00 bond issue properly authorized by vote of the electors of a municipality at the August, 1923, primary election, but never issued because of tax limitations, may now be issued, and the issuance thereof is a condition precedent to submitting the question of the exempting of a levy for the redemption of such bonds and for the interest from the fifteen mill limitation at the November, 1927, election under the provisions of Sections 15, et seq., of House Bill No. 80, passed by the 87th General Assembly on April 13, 1927.*

2. *The better procedure would be to submit the questions both of issuing the bonds and exempting the levy at the same election and on the same ballot under the provisions of Sections 2293-19 to 2293-23, General Code, both inclusive, as enacted by the 87th General Assembly in House Bill No. 1, passed April 21, 1927.*

COLUMBUS, OHIO, September 14, 1927.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication reading as follows:

"In 1923 the council of the city of ----- passed a resolution providing for an issue of bonds in the sum of \$600,000.00, which resolution was submitted to the electors at the August, 1923, primary and received a favorable vote. The bonds have never been issued however, because of the local tax situation but council now desires to issue the bonds and to submit the question of the exempting of a levy for their redemption and interest at the November election in the current year.

Laws governing both issues and elections, etc., have been changed and amended since the passage of the original resolution and we will appreciate your opinion as to the legality of submitting a tax levy question, as proposed, and issuing the bonds under the original resolution."

Your letter does not specify the purpose for which the \$600,000.00 of bonds were to be issued, but I am informed that they were to be issued for the purpose of constructing a hospital, under the provisions of Section 3939 of the General Code. While Section 3939, General Code, has been amended several times since the date of the election referred to in your letter, supra, the authority to issue bonds for the purpose of constructing hospitals, by municipalities, has not been repealed.

Your inquiry resolves itself, therefore, into the question as to whether or not an authority to issue bonds for a certain purpose, pursuant to a favorable vote by the electors of the municipality more than four years ago, under the provisions of the laws then in force, is still in effect, so that the question of the exempting of a levy for their redemption and interest may be submitted at the November election in the current year.

The provisions of law relating to the submission of the question of issuing bonds to the voters of the municipality in effect at the time of the August, 1923, primary, were Sections 3942, et seq., of the General Code. These sections were not specifically repealed until the passage of House Bill No. 1, by the 87th General Assembly, on April 21, 1927. On March 25, 1925, the 86th General Assembly passed an act (111 O. L. 335) entitled:

"An Act—To provide for the issue of bonds by local subdivisions, and to amend Section 3941 of the General Code relating thereto."

The latter act became Sections 5649-9 to 5649-9f, General Code, both inclusive, and Section 5649-9d, in so far as applicable to the question before us, reads as follows:

"The provisions of Sections 2, 3, 4 and 5 of this act shall supersede the various provisions of law governing the issue of bonds of any bond-issuing authority, the passage of resolutions, the publication of notices, the holding of elections, the form of the ballot, the percentage of vote required, the time of holding elections and the levy of taxes, in so far as they are inconsistent herewith."

It will be noted that while the act above referred to did not specifically repeal Sections 3942, et seq., General Code, it did repeal them in so far as the provisions of the latter sections were inconsistent with Sections 5649-9, et seq., of the General Code. However, Section 26 of the General Code reads as follows:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

I have no difficulty in arriving at the conclusion that the proceedings of a municipality leading up to an issue of bonds come within the purview of the "proceedings" referred to in Section 26, supra, and that the enactment of Sections 5649-9, et seq., of the General Code, did not operate to make invalid or terminate the authority to issue the \$600,000.00 of bonds authorized by a vote of the electors of the city above referred to in August, 1923.

Sections 3942, et seq., General Code, were specifically repealed by House Bill No. 1 of the 87th General Assembly, passed April 21, 1927. However, Section 20 of that act reads as follows:

"Bonds issued prior to the effective date of this act and bonds issued after said date, which have been approved by vote of the people, or by resolution of the taxing authority prior to the day this act is filed with the Secretary of State, shall be valid obligations of the taxing district issuing the same if they would be valid under the provisions of law in effect prior to the passage of this act. Bonds which have been approved by vote of the people, prior to the effective date of this act, may be issued thereafter under the provisions of Section 2293-25 to 2293-29 inclusive. Tax levies, in anticipation of which any such bonds have been issued, shall be levied notwithstanding the repeal of the law authorizing such levies."

The above section clearly indicates the intention of the legislature not to interfere with the issuance of bonds authorized by a vote of the people, prior to the date the act was filed with the Secretary of State, to wit, May 11, 1927, except that bonds which have been approved by a vote of the people, prior to the effective date of the act, must be issued in accordance with the provisions of Sections 2293-25 to 2293-29, General Code, both inclusive.

The procedure to be followed in submitting the question of exempting a levy for the redemption and interest of bonds to a vote of the people is outlined in Sections 15, et seq., of House Bill No. 80 of the 87th General Assembly, passed April 13, 1927. Section 15 of that act specifically grants authority for submitting the question, and in so far as pertinent, provides:

"The taxing authority of any subdivision at any time prior to September 15 in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

\* \* \* \* \*

2. For the payment of debt charges on certain described bonds, notes or certificates of indebtedness of the subdivision issued subsequent to January 1st, 1925.

3. For the debt charges on all bonds, notes and certificates of indebtedness issued and authorized to be issued prior to January 1st, 1925.

\* \* \* "

As stated in your communication, the \$600,000.00 of bonds have never been issued. Clearly, therefore, they do not fall within the purview of Subsection 3 of Section 15 of House Bill No. 80, supra, which relates to debt charges on all bonds issued and authorized to be issued prior to January 1, 1925; nor until they are issued do they come within the provisions of Subsection 2 of Section 15 of House Bill No. 80, supra. In my opinion said subsections relate to bonds which have been actually issued and are outstanding obligations of the municipality and not to proposed issues of bonds.

For the foregoing reasons it is my opinion that until the \$600,000.00 of bonds referred to in your communication are issued, the question of exempting a levy for their redemption and interest from the fifteen mill limitation cannot be submitted to a vote of the people.

There is no doubt in my mind that the authorities of the City of ----- might very properly issue the bonds and then submit the question of exempting the levy for their redemption and interest to a vote of the electors at the November, 1927, election. However, if the levy should fail to carry by the required majority, it will be necessary to levy a tax for retirement and interest purposes for the payment of

said bonds, within the fifteen mill limitation, and to reduce the amount required by the city for operating expenses and general purposes accordingly. The far better procedure would, in my opinion, be to abandon the \$600,000.00 of bonds authorized by a vote of the electors in 1923 and proceed under the provisions of House Bill No. 1 of the 87th General Assembly to submit the questions both of issuing the bonds and for a levy of taxes outside of existing limitations at the same election and on the same ballot. Sections 2293-19 to 2293-23, General Code, both inclusive, as enacted by the General Assembly in said House Bill No. 1, grant the authority for such election, set out the procedure to be followed, prescribe the form of ballot to be used and the majority required to authorize the issue and the exemption of the levy.

For the reasons above stated, it is my opinion that unless the City of ----- proceeds to issue, and issues the \$600,000.00 of bonds referred to in your communication, it may not submit the question of exempting the levy for their redemption and interest at the November, 1927, election.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1000.

PROBATE COURT—JURISDICTION TO ADMINISTER ESTATE—DECEASED OF OHIO SOLDIERS' HOME.

SYLLABUS:

1. *Upon the death of an inhabitant of this state, under the terms of Section 10604, General Code, the Probate Court of the county in which he was an inhabitant or resident at the time he died has sole jurisdiction to administer said inhabitant's estate.*
2. *The question of the jurisdiction of the Probate Court to appoint executors or administrators for soldiers who die in the Ohio Soldiers' Home is a question of fact to be determined by the court before which the application for administration is made.*
3. *If the Probate Judge of any county makes a finding that it has jurisdiction of the estate of a deceased soldier who died at the Ohio Soldiers' Home, and issues letters testamentary or letters of administration, it is the duty of the Treasurer of said Home to turn over to the executor or administrator, appointed by such court, as the case may be, any monies or other property belonging to said deceased soldier which may be in his possession.*

COLUMBUS, OHIO, September 14, 1927.

MR. C. B. DENNIS, *Treasurer, Ohio Soldiers' and Sailors' Home, Sandusky, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

“Kindly inform me as to the following situation: A man who has been a member of this Home, and in the hospital most of the time, since 1894, has recently died and his remains taken to his former home—Coshocton, O. He left a considerable amount of money which will no doubt be demanded by his