

within the limitation of law, it should certify such finding to the tax levying authority in order that it may levy a tax on the taxable property within such taxing district on the amount of the excess so found.

Respectfully,

GILBERT, BETTMAN,

Attorney General.

4521.

CONSERVATION COUNCIL — UNAUTHORIZED TO LEASE OR PURCHASE LANDS FOR PUBLIC FISHING.

SYLLABUS:

The Conservation Council has no power to lease or buy lands under and along both sides of streams in order to allow the public to fish under such restrictions as are deemed necessary by the Council.

COLUMBUS, OHIO, July 25, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This acknowledges the receipt of a recent communication from Hon. William H. Reinhart, Conservation Commissioner, which reads as follows:

“Please render an opinion on the following:

Can the Division of Conservation legally lease or buy land under and along both sides of streams in order to allow the general public to fish, under such restrictions as are deemed necessary and lawful by this Division?”

The Conservation Council, being of statutory origin, has only such powers as are expressly granted thereto and such additional powers as are necessary to carry the express powers into effect.

A review of the various statutes relative to the authority of the Conservation Council is therefore necessary to a determination of your inquiry. Section 1435-1, General Code, reads in part as follows:

“The conservation council shall be empowered to acquire by gift, lease or purchase suitable lands or surface rights upon suitable lands, for the purpose of establishing thereon public hunting grounds as a state game refuge. * * * It may also acquire by gift, lease or purchase suitable land for the purpose of establishing state fish hatcheries and may erect thereon such buildings or structures as it shall deem necessary.

The title or lease to any and all such lands shall be taken by the division of conservation in the name of the state of Ohio, and when so acquired the entire supervision of such lands shall be under the division of conservation. The lease or purchase price of any and all such lands may be paid for from hunters' and trappers' license funds.”

The pertinent language of the above section is explicit in its limitations, namely that the Conservation Council may only acquire lands for the purpose of establishing state fish hatcheries. It is apparent from a reading of this section that if the General Assembly wished to confer upon the Conservation Council the power to acquire by gift, lease or purchase suitable lands or surface rights upon suitable lands for the purpose of establishing public fishing streams as was conferred in regard to public hunting grounds, it would have so provided.

Section 1435-2, General Code, reads in part as follows:

“When in the opinion of the conservation council it is necessary to procure lands, or surface rights upon lands, for the purpose of reforestation or establishing thereon public hunting grounds or fish hatcheries, and the council and the owner or owners of said lands are unable to agree upon their purchase and sale, the council shall execute and subscribe a certificate containing the following:

* * * * *

Your attention is directed to the fact that while such section authorizes the condemnation of lands for the purpose of establishing thereon hunting grounds, the only authority as to the appropriation of land for fishing purposes is for the establishment of fish hatcheries. An examination of the statutes pertaining to the powers of the Conservation Council to acquire lands for various purposes, impels the conclusion that the Conservation Council has no power to lease or buy lands under and along both sides of streams in order to allow the public to fish under such restrictions as are deemed necessary by the Council.

I am not unmindful of the fact that the moneys derived from the sale of fishing licenses may be expended by the Conservation Council for “the protection, propagation and preservation of fish, including the establishment, operation and maintenance of fish hatcheries, the leasing, purchasing or otherwise acquiring title to land for said hatcheries, constructing fish chutes and dams and other methods of fish propagation and fish culture.” Section 1430, General Code.

In determining the scope of such section, the rule is that laws authorizing the expenditure of public funds are to be strictly construed. In view of the fact that while the legislature expressly authorized the expenditure of fishing license fees for the acquisition of land for the purpose of establishing, etc., fish hatcheries, it did not include the acquisition of land for public fishing purposes, and bearing in mind that the power conferred upon the Conservation Council for the acquisition of land by other sections is specifically limited to the acquisition of land for fish hatchery purposes, I am led to the conclusion that Section 1430 does not authorize the expenditure of such fees for the purposes mentioned in your inquiry.

Respectfully,
GILBERT BETTMAN,
Attorney General.