

OPINION NO. 151

Syllabus:

1. A municipal ordinance requiring a municipal license to hunt or trap within the boundaries of that municipality is an invalid exercise of municipal power since such an ordinance is in conflict with the general laws.
2. A municipal ordinance allowing only residents of the municipality to hunt within the municipal boundaries is invalid.

To: Fred E. Morr, Director, Department of Natural Resources, Columbus, Ohio

By: William B. Saxbe, Attorney General, September 7, 1966

Your request for my opinion sets forth several municipal ordinances of which the following will illustrate the first of the two questions you pose, to wit:

" * * * That no non-resident [of the city] shall hunt, pursue or kill any game bird or game animal in the city * * * unless such non-resident shall secure a hunting permit for each two month period from November 15, through January 15, from the Police Chief * * *, at a cost of Ten Dollars (\$10.00), said fees to be deposited in the General Fund."

Your first question is whether such a municipal ordinance requiring a municipal license to hunt or trap within the boundaries of that municipality, which license is in addition to the state hunting license, is a valid exercise of municipal power.

Acting pursuant to Section 36, Article II, Ohio Constitution, the General Assembly has provided a comprehensive statewide regulatory scheme in this field. See Chapters 1531 and 1533, Revised Code. Especially important to the instant question are Sections 1531.02, 1531.08 and 1533.10, Revised Code. Section 1531.02, *supra*, provides in pertinent part:

"The ownership of and title to all wild animals in this state, not legally confined or held by private ownership legally acquired, is in the state, which holds such title in trust for the benefit of all the people. Individual possession shall be obtained only in accordance with the Revised Code or division of wildlife orders. No person shall at any time of the year take in any manner or possess any number or quantity of wild animals, except such wild animals as the Revised Code or division orders permit to be taken, hunted, killed, or had in possession,

and only at such time and place, and in such manner, as the Revised Code or division orders prescribe. * * *" (Emphasis added)

Section 1531.08, Revised Code, defines the powers of the chief of the division of wildlife and the applicable portions read:

"In conformity with Section 36 of Article II, Ohio Constitution * * *, the chief of the division of wildlife has authority and control in all matters pertaining to the protection, preservation, propagation, possession, and management of the wild animals and may issue temporary written orders for the management of such wild animals.* * *"

"The chief may establish, modify, rescind, and enforce orders throughout the state or in any part or waters thereof as provided by sections 1531.08 to 1531.12, inclusive, and other sections, of the Revised Code. * * *" (Emphasis added)

Last, and most important of the aforesaid statutes, is Section 1533.10, Revised Code, which provides, in part, as follows:

"No person shall hunt or trap any wild bird, or wild quadruped without a hunting and trapping license. * * * Every applicant for a hunting and trapping license who is a resident of the state shall procure a resident hunting and trapping license, the fee for which shall be two dollars, * * * Every applicant for a hunting and trapping license who is a nonresident of the state shall procure a nonresident hunting and trapping license, the fee for which shall be twenty dollars. * * *" (Emphasis added)

It is obvious that the license required by Section 1533.10, supra, is a state license, not a municipal license. See Section 1533.13, Revised Code.

It is next necessary to determine whether municipalities have any authority to regulate hunting and trapping within their boundaries.

There is no statute specifically authorizing or empowering a municipal corporation to regulate hunting and trapping within its boundaries by issuing a license therefor. Consequently, the only potential source of municipal power so to act is Section 3, Article XVIII, Ohio Constitution, which reads:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." (Emphasis added)

A municipal ordinance, such as the one previously set forth,

is a police regulation within the meaning of Section 3, Article XVIII, supra. This is succinctly pointed out in the case of Auxter v. Toledo, 173 Ohio St. 444, where the Court stated at page 446:

"In our opinion, any municipal ordinance, which prohibits the doing of something without a municipal license to do it, is a police regulation within the meaning of Section 3 of Article XVIII of the Ohio Constitution. * * *"

Since the licensing ordinances in question are police regulations, if these ordinances conflict with the general laws they are invalid. Compare State, ex rel. Canada v. Phillips, 168 Ohio St., 191.

One of the leading cases on conflict between a municipal ordinance and the general laws is Village of Struthers v. Sokol, 108 Ohio St. 263, the second branch of the syllabus of which reads:

"2. In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa."

This language was clarified in the case of Auxter v. Toledo, supra, where the Court stated at page 447:

"In the instant case, the ordinance forbids and prohibits what the statute permits and licenses. * * *"

(Emphasis theirs)

Upon paying the prescribed fee, a person may obtain a license to hunt and trap within the State of Ohio. A municipal ordinance which requires an additional license to hunt or trap within that municipality certainly would "conflict" with the general laws. Consequently, such an ordinance would be invalid. E.g. C.L. Maier Co. v. Canton, 94 Ohio Law Abs. 434.

Therefore, in specific answer to your first question, it is my opinion that a municipal ordinance requiring a municipal license to hunt or trap within the boundaries of that municipality is an invalid exercise of municipal power since such an ordinance is in conflict with the general laws.

The second question you pose is whether a municipal corporation can pass and enforce an ordinance which allows only residents of the municipality to hunt within the municipal boundaries and prohibits nonresidents from hunting therein. An ordinance of this nature would patently conflict with Section 2, Article I, Ohio Constitution, which is commonly referred to as the equal protection clause. The conflict apparent in the instant case is parallel to that present in the case of Richter Concrete Corp. v. Reading, 166 Ohio St. 279, where the Supreme Court held that a municipal ordinance discriminating against nonresidents was invalid. The Court in Richter, supra, stated at pages 283 and

284:

"As set forth in 12 American Jurisprudence, 236, Section 538, the constitutional guaranty as to the equal protection of the laws may invalidate statutes and ordinances which effect an unlawful discrimination in favor of a municipality or its inhabitants."

Also see Myers v. Defiance, 67 Ohio App. 159.

Therefore, in specific answer to your second question, it is my opinion that a municipal ordinance allowing only residents of the municipality to hunt within the municipal boundaries is invalid.

Accordingly, it is my opinion and you are hereby advised as follows:

1. A municipal ordinance requiring a municipal license to hunt or trap within the boundaries of that municipality is an invalid exercise of municipal power since such an ordinance is in conflict with the general laws.
2. A municipal ordinance allowing only residents of the municipality to hunt within the municipal boundaries is invalid.