

217.

APPROVAL—BONDS OF CITY OF COLUMBUS, FRANKLIN
COUNTY, OHIO, \$738,950.00.

(\$559,950.00 within 15 mill; \$179,000.00 within 10 mill).

COLUMBUS, OHIO, March 8, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of City of Columbus, Franklin County, Ohio, \$738,950.00 (\$559,950 within 15 mill; \$179,000 within 10 mill). I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of refunding bonds dated March 1, 1937, bearing interest at the rate of 3% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

218.

CONSERVATION COUNCIL—PLANTING OF FISH—INLAND
LAKES—DETRIMENTAL TO NATIVE FISH.

SYLLABUS:

The Conservation Council may in the exercise of the authority conferred under the provisions of Section 1438-1, General Code, control the planting of fish in Ohio's inland lakes, when after due consideration it is determined that the planting of such fish would be detrimental to native fish and should not be allowed.

COLUMBUS, OHIO, March 8, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication, which reads as follows:

"A group of fishermen in Akron are contemplating, and have raised a fund, for the purpose of planting muskellunge and wall-eyed pike in Long Lake, one of the lakes of the Portage chain.

In the opinion of our Dr. Langlois, Fish Culturist, this would be detrimental to native fish and should not be allowed.

I have consequently advised these interested fishermen that I will not permit these fish to be placed in this lake. They object to my ruling, and have taken the stand that I am exceeding my authority, and they are going to take the matter up over my head, with the Conservation Council.

Will you kindly advise us whether in your opinion the Conservation Council has the authority to control the planting of fish in Ohio's inland lakes?"

Section 1438-1, General Code, in so far as it pertains to your inquiry, reads in part as follows:

"The Conservation Council shall have authority and control in all matters pertaining to the protection, preservation and propagation of birds, wild animals, game, fur-bearing animals, clams, mussels, and fish, except authority to change laws in the General Code covering commercial fishing in the Lake Erie fishing district, and in such other wards where fishing with nets is licensed by law, within the state and in and upon the waters thereof. * * * It shall enforce by proper legal action or proceeding the laws of the state for the protection, preservation and propagation of such birds, animals and havens for the propagation of fish and game, and, so far as funds are provided therefor, shall adopt and carry into effect such measures as it deems necessary in the performance of its duties."

A reading of Section 1438-1, *supra*, discloses no express provision granting to the Conservation Council authority or power to control the planting by individuals of fish in Ohio's inland lakes. Nevertheless, under and by virtue of the language used in Section 1438-1, *supra*, the Conservation Council shall *have control and authority in all matters* pertaining to the protection, preservation and propagation of fish and game, and a duty is enjoined upon the Conservation Council to enforce by proper legal action or proceeding all the fish and game laws of the state.

I am not unmindful that it is a well settled principle of law that administrative boards being creatures of statute can only exercise such powers as are expressly granted by statute, and such implied powers as

are necessary to carry into effect the express powers so granted. I am also aware that statutes granting powers to administrative boards must be strictly construed. However, statutes which are subject to a strict construction are nevertheless to be construed in a fair and reasonable manner, so as to give full force and effect to the purpose for which they were enacted. In Volume 37, Ohio Jurisprudence, Section 402, page 722, relative to the limitations to be placed upon rules of strict construction, it is stated that :

“The rule of strict construction should not be carried beyond the reason for its existence. A statute which is subject to the rule of strict construction is nevertheless entitled to a reasonable, sensible and fair construction according to the sense in which the terms thereof were intended to be used. The rule does not require the court to depart from the plain or usual meaning of the terms employed. Nor is the rule violated by allowing the words of the statute to have their full meaning or even a more extended of two meanings, where such construction best harmonizes with the context and most fully promotes the policy and objective of the legislature. * * * Strict construction does not mean that the statute should be construed in a spirit of hostility, or so construed as to render it practically inoperative and ineffectual, or as to defeat the obvious purpose and intention of the legislature. The policy and purpose of the statute are not to be ignored.”

For the purpose of arriving at a proper answer to your question, I deem it unnecessary to be much concerned with the proposition of construing and interpreting the provisions of Section 1438-1, supra. The language “shall have control and authority in all matters pertaining to the protection, preservation and propagation of birds, wild animals, game, fur-bearing animals, clams, mussels and fish,” as used therein, is plain and unambiguous. Manifestly, it was the intention of the Legislature to confer upon the Conservation Council broad and extensive powers in all matters relating to fish and game protection, preservation and propagation.

It will be observed that under the provisions of Section 1438-1, supra, the Conservation Council shall, so far as funds are provided therefor, adopt and carry into effect such measures as it deems necessary in the performance of its duties. It will further be observed that one of the duties enjoined upon the Conservation Council is to enforce by proper legal action or proceeding the laws of the state for the protection, preservation and propagation of fish and game.

In view of the powers conferred and in pursuance of the duties enjoined upon the Conservation Council under and by virtue of the provisions of Section 1438-1, supra, the Conservation Council not only possesses authority to control the planting of fish by individuals or a group of individuals in Ohio's inland lakes, which are determined to be detrimental to native fish, but it is a duty incumbent upon the Conservation Council to prohibit, by legal action or proceeding, such action on the part of these individuals.

It is therefore my opinion, in specific answer to your question, that the Conservation Council may in the exercise of the authority conferred under the provisions of Section 1438-1, supra, control the planting of fish in Ohio's inland lakes, when after due consideration it is determined that the planting of such fish would be detrimental to native fish and should not be allowed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

219.

APPROVAL—LEASE OF OFFICE SPACE FOR USE BY THE SALES TAX SECTION OF THE TAX COMMISSION OF OHIO AT COLUMBUS—THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY OF CINCINNATI, OHIO.

COLUMBUS, OHIO, March 8, 1937.

HON. CARL G. WAHL, *Director Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by The Western and Southern Life Insurance Company of Cincinnati, Ohio, in and by which there are leased and demised to the State of Ohio, through you as Director of Public Works, certain premises for the use of the Sales Tax Section of the Tax Commission of Ohio.

By this lease, which is one for a term of two years commencing on the 1st day of January, 1937, and ending on the 31st day of December, 1938, and which provides for a monthly rental of \$64.13, there are leased and demised to the state for the use of the Sales Tax Section of the Tax Commission of Ohio certain premises in the Peters Building at 62-68 East Gay Street in the city of Columbus, Ohio, which are more