

as 'shall.'” And, again, “the words ‘shall’ and ‘may’ in general acts of the Legislature are to be construed imperatively.”

In *Lessee of Swazey's Heirs vs. Blackman*, 8 Ohio 19, Judge Grimke said :

“ * * * and ‘may’ means ‘must’ in all those cases where the public are interested, or where a matter of public policy, and not merely of private right, is involved.”

This case was cited with approval by Chief Justice Marshall in *Stanton vs. Realty Co.*, 117 O. S. 355.

In *Schuyler Co. vs. Mercer Co.*, 5 Cowen, 24, the rule on this subject was said to be “that the word ‘may’ means ‘must’ or ‘shall’ only, in cases where the public interests or rights are concerned, and where the public or third persons have a claim *de jure* that the power shall be exercised.”

The above language in the Schuyler case was quoted with approval by Judge Peck in *Sifford et al. vs. Beatty*, 12 O. S. 194.

I am therefore of the opinion that it is mandatory that the county sealer of weights and measures charge the fees prescribed by statute for his services.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1394.

FISHING DEVICES—PROHIBITED BY LAWS OF OHIO AND STATES
HAVING JURISDICTION OVER OHIO RIVER—MAY NOT BE POS-
SESSED WITHIN ONE MILE OF SUCH RIVER—CONFISCATION.

SYLLABUS:

Under the terms of Section 1419 of the General Code, persons are not permitted to possess, within one mile of the Ohio River, fishing devices that are prohibited by the laws of the State of Ohio and also by the laws of the states having jurisdiction over the Ohio River, and such devices when so possessed may be confiscated under the provisions of Section 1450 of the General Code.

COLUMBUS, OHIO, January 13, 1930.

HON. JOHN W. THOMPSON, *Commissioner, Division of Conservation, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows :

“According to all of the information which we can receive, it would appear that the waters of the Ohio River belong to and are under the jurisdiction of the states across these waters from Ohio. In other words, the State of Ohio has no jurisdiction over the waters of the Ohio River.

It comes to our attention that many infractions of the laws of other states are being committed in these waters, while the illegal devices with which these violations are committed are kept on the Ohio side of the river. Section 1419 reads as follows :

‘Nothing in this act shall apply to nets, traps, or other devices for catching fish, in the possession of the owner of a private artificial fish pond or privately owned lake for use in such pond or lake only, or to fish nets, fish traps, or

other devices for catching fish, *not otherwise prohibited*, to be used in catching fish in Lake Erie, or in the Ohio River, or in those bays, marshes, estuaries, inlets, bordering on, flowing into or in any manner connected with Lake Erie, *wherein fishing with such devices is permitted*, when such fish nets, fish traps, or other devices are kept within one mile of the waters of the Lake Erie fishing district, *or within one mile of the Ohio River*. Nothing in this chapter shall apply to nets, traps, or other devices, in the possession of bona fide manufacturers, or dealers, when such nets, traps, or other devices are kept in the regular places of business of such manufacturers or dealers, or are in courses of transportation, or to nets, traps, or other devices in the possession of common carriers for transportation.'

Section 1420 reads in part as follows:

'No person shall draw, set, place, locate, *maintain, or have in possession*, a pound net, crib net, trammel net, fyke net, set net, seine, bar net, fish trap or any part thereof, throw or hand line, with more than three hooks attached thereto, *or any other device for catching fish*, except a line with not more than three hooks attached thereto, * * *.'

The question now arises as to whether or not the Ohio Game Protectors have a right to make arrests and confiscations of these illegal devices which are hidden in Ohio, and we respectfully request your official opinion in this matter."

In your letter you quote Sections 1419 and 1420 of the General Code, which are pertinent to your inquiry, and it is unnecessary, therefore, for me to recopy them here.

The territorial limits of Ohio extend only to the low water mark on the northern shore of the Ohio River, and, therefore, the State of Ohio does not have jurisdiction to regulate fishing in the Ohio River. Nevertheless, the State of Ohio has jurisdiction to regulate fishing within its territorial limits and may provide for the forfeiture of illegal devices possessed in its territory even though the use of such devices is not prohibited in the Ohio River by the state having jurisdiction over it, and there can be no doubt that the Legislature of Ohio may provide for the forfeiture of illegal devices, the use of which is also prohibited by other states having jurisdiction over the Ohio River. By the plain provisions of Section 1419 of the General Code, the Legislature has exempted certain devices, otherwise prohibited, in the possession of persons within one mile of the Ohio River if the use of such devices is permitted by the states having jurisdiction over the Ohio River. The Legislature recognized that there may be devices that could be lawfully used in the Ohio River and the possession of such devices being prohibited in the State of Ohio would have a tendency to hinder the use of such devices in the Ohio River; that is, it would prevent fishermen in Ohio from bringing their devices which they could lawfully use in the Ohio River upon the Ohio shore. The Legislature in order to relieve such a situation permitted possession of such devices used in fishing in the Ohio River in territory within one mile of the Ohio River. Apparently the Legislature limited the territory to one mile so as to prevent the evasion of the laws which prohibit the possession of such devices in other parts of the State of Ohio. It was never the intention of the Legislature, under the terms of Section 1419 of the General Code, to permit persons to possess devices which were prohibited by the laws of the State of Ohio and also prohibited by the laws of the states having jurisdiction over the Ohio River, for such a construction would mean that the Legislature provided a haven along the Ohio shore for violators of the fish and game laws of other states, and certainly the Legislature never intended to create such a condition.

In specific answer to your inquiry, I am of the opinion that under the terms of Section 1419 of the General Code, persons are not permitted to possess, within one

mile of the Ohio River, fishing devices that are prohibited by the laws of the State of Ohio and also by the laws of the states having jurisdiction over the Ohio River, and such devices when so possessed may be confiscated under the provisions of Section 1450 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1395.

COUNTY BUILDING COMMISSION—COMPENSATION FIXED BY COMMON PLEAS COURT AND PAID FROM COUNTY TREASURY ON SAID COURT'S APPROVAL.

SYLLABUS:

Persons appointed on a county building commission for the building of a county home, in accordance with Section 2333, General Code, should receive a reasonable compensation within the limitations fixed by the statute for the time actually employed, to be fixed by the Court of Common Pleas, and paid from the county treasury, upon the approval of said Court of Common Pleas.

COLUMBUS, OHIO, January 13, 1930.

HON. J. F. KUHN, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry as follows:

“Under authority of Section 2333, G. C., our county commissioners determined to erect a county building known as our county home. The necessary proceedings were adhered to, and our judge of the Court of Common Pleas appointed four electors of the county, who, in connection with our county commissioners, erected and completed said county building. The question of their compensation is now a matter to be determined. Section 2334, G. C., provides:

‘The persons so appointed shall receive a reasonable compensation for the time actually employed, to be fixed by the Court of Common Pleas, and on its approval paid from the county treasury.’

The court has fixed the compensation. Is it the duty of the county commissioners to approve? If it is not their duty, who, by this section is required to approve?”

In 1904 an act was passed by the General Assembly, entitled:

“An Act to provide for a commission for building court houses.”

(97 O. L. 111). Section 1 of the act provided for the creation of a building commission in counties where the county commissioners had determined to erect a court house costing to exceed \$25,000. The said section fixed the powers of the commissioners and the manner of compensating the members of such a commission.

In 1906 the act was amended in some respects (98 O. L. 53), but it still applied to no county buildings other than court houses, and made no change with respect to the compensation to be paid to the members of a building commission of that kind.