

2. After the second day of January, 1928, the county may pay a portion or all of the cost and expense of surveys and other preliminary expenses incident to the improvement of a state highway only in those instances where the improvement is being constructed under the provisions of Section 1191, General Code, 112 O. L. 469.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1424.

RABBITS—OPEN SEASON DISCUSSED.

SYLLABUS:

The last day on which hares and rabbits may lawfully be hunted during 1927 will be December 31st.

COLUMBUS, OHIO, December 22, 1927.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated December 22, 1927, which reads as follows:

“Referring to Section 1396, General Code of Ohio, ‘Hares and rabbits may be taken and possessed only from the fifteenth day of November to the first day of January, both inclusive, and such taking shall be done only with gun and dog, or with gun.’

Since January 1, 1928, falls on Sunday, many inquiries have been received as to the permissibility of hunting rabbits on Monday, January 2, 1928. Your opinion on same is hereby requested.”

Section 1396, General Code, in so far as pertinent to your inquiry, provides:

“Open season: Hares and rabbits may be taken and possessed only from the fifteenth day of November to the first day of January, both inclusive,
* * * ”

Many laymen are under the mistaken impression that Sections 8301 and 10216, General Code, have the effect of extending the open season to and including January 2, 1928.

Section 8301, General Code, provides in part as follows:

“ * * * But if the first day of January * * * be the first day of the week, known as Sunday, the next succeeding secular or business day shall be a holiday.”

Section 10216, General Code, provides:

“Unless otherwise specifically provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; except that the last shall be excluded if it be Sunday.”

No language contained in Section 8301, supra, has the effect of extending the open season for hunting rabbits. Obviously, Section 10216, supra, has no application because the "taking and possessing" of hares and rabbits is "not an act required by law to be done."

In this connection your attention is directed to Section 13048, General Code, which provides in part as follows:

"Whoever, being over fourteen years of age, engaged in * * * hunting, fishing or shooting on Sunday, on complaint made within ten days thereafter, shall be fined not more than twenty dollars or imprisoned not more than twenty days, or both."

In view of the foregoing and answering your question specifically, it is my opinion that the last day on which hares and rabbits may lawfully be hunted during 1927 will be December 31st.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1425.

PRISONER—COMMUTATION AND PAROLE DISTINGUISHED—CONDITIONS AND EFFECT OF EACH DISCUSSED.

SYLLABUS:

1. *By the terms of Section 99, General Code, a pardon or commutation of sentence may be granted by the governor upon such conditions as the governor may impose, but such pardon or commutation shall not take effect until the conditions so imposed are accepted by the convict; and while the conditions attached to the granting of a pardon may be either conditions precedent or conditions subsequent, the conditions upon which a commutation may be granted must be conditions precedent.*

2. *The Ohio Board of Clemency is without authority to order the return of one who has violated the conditions of a conditional pardon. Such return may be accomplished only upon the written request of the governor and in accordance with the provisions of Sections 101, et seq. of the General Code.*

3. *Where a commutation has been granted by the governor to a prisoner convicted of a felony so as to render such prisoner eligible for parole by the Ohio Board of Clemency, he may be paroled by such board the same as though he were eligible under the sentence originally imposed and upon violation of his parole such prisoner may be returned into custody to serve the remainder of his sentence.*

COLUMBUS, OHIO, December 23, 1927.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter which reads as follows:

"The Ohio Board of Clemency, at times, recommends the commutation of a prisoner's sentence to the governor, recommending at the same time that the commutation is for release as on parole for some definite period.