

and one-half (1½) acre lot or tract of land leased by the State of Ohio to D. Z. Cooper by lease dated November 1st, 1835, and of the owners of sub-leases for any portion thereof, with the right of renewal for the same under the provisions of House Bill No. 162 as hereinabove referred to."

This enactment does not assume to grant any additional rights, but seeks only to provide for the sale subject to the rights of the present owners of the Cooper lease, whatever those rights may be.

In view of the conclusion herein, it is unnecessary to discuss the question as to any adjustment of the rental under the Cooper lease upon the discontinuance of the water in the canal.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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788.

DEVISE TO STATE OF UNDIVIDED INTEREST IN LAND TO BE USED  
FOR BIRD SANCTUARY.

*SYLLABUS:*

*Discussion relative to devising an undivided interest in land to the State for a bird sanctuary.*

COLUMBUS, OHIO, July 27, 1927.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

"I am enclosing herewith correspondence received this day from Director Williams of the Agricultural Experiment Station concerning a proposed gift to the State of an undivided interest, in a farm located in southern Ohio, for the purpose of establishing a bird sanctuary.

The question arises can such a gift be accepted and if so what should be the phrasing to be incorporated in the will?"

The proposed gift concerning which you inquire is described in one of the communications attached to your letter, which reads as follows:

"A lady owns an undivided interest (over 40%) in a farm of 180 acres in Southern Ohio, and is considering drawing up her will in such a way that this undivided interest be given to the State of Ohio to be used as a bird sanctuary. If this were done, what provision would be made by the state to see that the birds would be always protected? If the state would look favorably upon this plan, I would appreciate it very much if you would suggest the phrasing to be incorporated in the will."

You will note that the person who is contemplating making the gift is not the sole owner of the land but only owns an undivided interest therein.

She, of course, can only devise such interest as she owns. She is a tenant in common, and the interest which the state could take, if she should will the land to the state, would be her interest as a tenant in common in the entire tract of land.

In 38 Cyc., at page 20, it is said as follows:

"A tenant in common has an interest in the possession of every part of the property, and from the nature of the estate must necessarily be in possession of the whole, and a tenant in common is entitled to possession of the common property as against all the world save his cotenants; and no one can complain of exclusive use of the common property by one tenant in common except his cotenant."

See also page 16, of the same volume, where it is said:

"Each tenant in common has the right of entry, and of ingress and egress, which right is several as well as common, \* \* \*"

and also page 17, which reads:

"Each tenant in common is equally entitled to the use, benefit, and possession of the common property, and may exercise acts of ownership in regard thereto, the limitation of his right being that he is bound to so exercise his rights in the property as not to interfere with the rights of his cotenant."

It is therefore quite apparent that one tenant in common can not devise the land on any conditions which would at all interfere with the rights of the other cotenants to enjoy the full use of the land. Neither could the state accept the land upon those terms and enforce such rights against said cotenants. One cotenant can not prevent another cotenant from hunting upon said premises, and therefore no full protection could be given to any wild game other than as provided for by the game laws of the state.

The state could not, therefore, accept such a devise and make a permanent bird sanctuary on part of the land for the reasons hereinabove set forth.

Moreover, should one of the cotenants seek to partition the property it would become necessary to appoint commissioners to set off to each cotenant his share of the property; but if said commissioners should find that the said property could not be divided without destroying the value thereof, they would proceed to appraise the same and make such return to the court, and if the court approved the return the property would then be sold and the proceeds distributed among the tenants in common.

For the above reasons, you are advised that unless the other cotenants agreed thereto the state would be unable to accept title to an undivided interest in land as a tenant in common and agree to use its interest in said land as a bird sanctuary.

These objections, however, could be removed, if the party so desires, by devising her interest in said real estate to the State of Ohio to be used as a bird sanctuary, and further providing that the real estate in question be partitioned, and if upon such proceedings it was found that such property could be divided, that the state should use the part thereof set off to it for the purposes mentioned in her will, while if it were found that said property could not be divided and that it was necessary to sell the same, that the state use its portion of the proceeds received from its share of the real estate so devised for the purpose of purchasing other real estate to be used as such sanctuary.

The will should also set forth what the party wishes to be done in order to create and maintain such a sanctuary.

Upon the death of the party it would be necessary for the legislature of the state to determine whether or not it would accept such devise and if it did so it would be bound to use the gift for the sole purpose provided in said will. The legislature could not at this time agree to accept the provisions of a will to become effective in the future, for the reason that the gift would not be complete until the death of the party devising the same and one legislature has no authority to bind another.

Without further information from the testatrix as to the terms and conditions she wishes to incorporate in her will, no attempt is made to draft a clause devising the interest in question to the state.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

789.

BOARD OF HEALTH—DUTIES IN CASES OF QUARANTINE—EXPENSE  
OF "NECESSARIES."

SYLLABUS:

1. *In all cases of quarantine it is the duty of the board of health to determine what food, fuel and other necessaries of life, including medical attendance, medicine and nurse, are needed by the persons quarantined, and furnish the same to such persons, if it is necessary to do so.*

2. *The expense so incurred by the board of health shall be paid by the parties so quarantined, if they are able to do so, and if not then by the municipality or township in which such persons are quarantined.*

3. *A municipality or township is not authorized to pay for such necessities when they are purchased by the persons so quarantined without the authority or consent of the board of health.*

4. *If a board of health finds that quarantined persons are unable to pay for services rendered by the attending physician after the board of health had been notified of a contagious disease and had thereafter quarantined the house and furnished a nurse for the care of the patient but failed to furnish medical service, or make inquiry relative to the necessity thereof, it is the duty of the president and clerk of such board by virtue of Section 4436 of the General Code to approve a reasonable amount for the services of the physician who cared for such patient, and the same should be paid by the municipality or township wherein such persons were so quarantined.*

COLUMBUS, OHIO, July 27, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

"Section 4436 of the General Code reads:

'When a house or other place is quarantined on account of contagious diseases, the board of health having jurisdiction shall provide for all persons confined in such house or place, food, fuel and all other necessaries of life,