

ment that there should exist the fact or honest belief on the part of the officer that before a warrant could be secured, the automobile would be beyond the reach of the officer with its load of illegal liquor.

It should further be pointed out most emphatically that, in the absence of facts upon which to base a reasonable belief that the law is being violated, no officer has the right to stop persons driving automobiles or to search such automobiles without a warrant. In the words of Chief Justice Taft, who wrote the prevailing opinion sustaining the conviction in the Carroll case, *supra*:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search."

Respectfully,
EDWARD C. TURNER,
Attorney General.

481.

FOXES—WHEN THEY ARE MAINTAINED AND CONFINED—SUBJECT TO TAXATION.

SYLLABUS:

Silver foxes reared, maintained and confined are the personal property of their owner and as such come within the statutory definition of property subject to taxation, and should be listed for taxation.

COLUMBUS, OHIO, May 12, 1927.

HON. W. M. MCKENZIE, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"The county auditor has requested me to write you relative to the question of taxing silver foxes. In this county we have what is known as the Scioto Valley Silver Fox Ranch. On this ranch there are a large number of these foxes and they have not been listed for taxation, the owner of the ranch claiming, I am informed, that they are wild animals and under the law he is not required to list them for taxation. Most of the foxes are raised on this ranch by him and are sold, as I am informed, in pairs. I understand that they receive from \$1500.00 to \$2000.00 per pair.

Kindly inform me whether or not these foxes should be returned for taxation purposes."

In wild animals one may acquire a qualified or special property by occupancy alone; for it is enough to catch and keep so that the creature cannot escape and regain its natural liberty. Almost all the elementary writers agree, however, that the animal must have been brought within the power of the pursuer before the right of ownership can vest in him. After the animal once becomes deprived of its natural liberty, by the aid of nets or snares or otherwise, and so is brought within the pursuer's power or control, he is considered its lawful owner in the qualified or special sense. Animals

ferae naturae give the right of ownership to man only so long as they continue in his actual keeping; and if at any time they regain their natural liberty his right instantly ceases. To this rule concerning wild animals an exception is found; namely, where the animal has grown tame and has allowed itself to be more thoroughly the property of mankind.

Young animals tame and practically in the power and dominion of an owner may be the subject of larceny, even though liable to become wild later.

It has been held that an otter being valuable for its fur, the stealing of the animal from its owner is larceny, if it be reclaimed, confined or dead: *State vs. House*, 65 N. C. 315.

When a man has once so seized them (animals *ferae naturae*) they become his qualified property, or if dead are absolutely his own: so that to steal them or otherwise invade his property, is, according to their respective values, sometimes a criminal offense, sometimes only a civil injury: *Blackstone II*, page 403.

The animal by becoming tame or reclaimed is considered to have voluntarily surrendered its natural liberty, and therefore becomes subject to absolute ownership, and the offspring being born into the state of servitude and brought up with mankind can likewise if not returned to a wild state be owned absolutely.

In the case of *State vs. Shaw*, 67 O. S. 157, it was held that:

“To acquire a property right in animals *ferae naturae*, so that they may be the subject of larceny, the pursuer must bring them into his power and control so that he may subject them to his own use at his pleasure and must so maintain his possession and control as to indicate that he does not intend to abandon them again to the world at large; but in cases where larceny is charged the law does not require absolute security against the possibility of escape.”

The court in this case was considering the validity of an indictment for stealing fish. It was further held in said case that:

“When fish are enclosed in a net, or in any other enclosed place, which is private property, from which they may be taken at any time at the pleasure of the owner of the net or enclosure, the taking of them therefrom with felonious intent will be larceny.”

It was also stated in said opinion at page 164, that:

“To acquire a property right in animals *ferae naturae*, the pursuer must bring them into his power and control, and so maintain his control, as to show that he does not intend to abandon them again to the world at large. When he has confined them within his own private enclosure where he may subject them to his own use at his pleasure, and maintains reasonable precautions to prevent escape, they are so impressed with his proprietorship that a felonious taking of them from his enclosure, whether trap, cage, park, net, or whatever it may be, will be larceny.”

Property in animals which are wild by nature is acquired by occupancy alone. Occupancy implies possession, custody, or control, and this may be gained by taming, domesticating or confining them: 1 R. C. L., page 1065.

Your letter discloses that the silver foxes in question are owned, maintained and confined on the fox ranch and that they have a sale value, as you understand, ranging

from fifteen hundred dollars (\$1500) to two thousand dollars (\$2,000) per pair. Said foxes therefore come within the term personal property.

Article 12, Section 2 of the Ohio Constitution reads:

“Laws shall be passed taxing by uniform rule, * * * personal property according to its true value in money, * * * .”

Section 5325 of the General Code provides:

“The term ‘personal property’ as so used, includes first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part of a parcel of real property, * * * .”

Section 5328 of the General Code reads:

“All real or personal property in this state, belonging to individuals or corporations, * * * of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. Such property, * * * shall be entered on the list of taxable property as prescribed in this title.”

It is evident that these silver foxes so reared, maintained and confined are the personal property of their owner and as such come within the statutory definition of property subject to taxation.

Specifically answering your question, it is my opinion that the foxes in question should be listed for taxation.

Respectfully,
EDWARD C. TURNER,
Attorney General.

482.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN BELMONT, GALLIA,
GEAUGA, MEIGS, MONROE AND MORGAN COUNTIES.

COLUMBUS, OHIO, May 12, 1927.

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

483.

BOARD OF EDUCATION—MAY ALLOW SCHOOL BUILDING TO BE
USED FOR RELIGIOUS EXERCISES.

SYLLABUS:

1. *When, in the judgment of a board of education, it will be for the advantage of the children residing in any school district to permit the use of the school building therein for the holding of religious exercises, when such use does not interfere*