

OPINION NO. 770**Syllabus:**

The Chief of the Division of Wildlife, acting pursuant to Section 1531.08, Revised Code, and in conformity to this section and Section 1531.09 to 1531.12, inclusive, Revised Code, has authority to limit the hunting of wild animals in an area including private property even though such limitation is not uniformly applied throughout the state.

To: Lynn B. Griffith, Trumbull County Pros. Atty., Warren, Ohio
By: William B. Saxbe, Attorney General, January 8, 1964

I am in receipt of your letter in which you ask, in effect, whether the Division of Wildlife can prohibit hunting on privately owned property where such prohibition is not universally applied throughout the state?

Section 1531.02, Revised Code, provides in that part pertinent:

"The ownership of and the title to all wild animals in this state, not legally confined or held by private ownership legally acquired, is in the state, which holds such title in trust for the benefit of all the people. Individual possession shall be obtained only in accordance with the Revised Code or division of wildlife orders. No persons shall at any time of the year take in any manner or possess any number or quantity of wild animals, except such wild animals as the Revised Code or division orders permit to be taken, hunted, killed or had in possession, and only at such time and place, and in such manner, as the Revised Code or division orders prescribe. No person shall buy, sell, or offer any part of wild animals for sale, or transport any part of wild animals, except as permitted by the Revised Code or division orders."

It is an established principle that the state has control of the game within its boundaries (with some exceptions not here material) and that its control extends to wild animals on private as well as public land. The state, ex rel. Collett v. Truax, 117 Ohio St., 78. It follows that the General Assembly has the power to enact such laws as may be reasonable or necessary to protect the public rights in game whether on public or private property.

A general discussion of the law of Ohio in this area is contained in 24 Ohio Jurisprudence 2d, Fish and Game, Section 3, page 285, wherein it is stated:

"By express statutory provision, the ownership of and title to all fish and wild animals in Ohio, not legally confined or held by private ownership legally acquired, is in the state, which holds such title in trust for the benefit of all people; and individual possession may be obtained only in accordance with the code or Wildlife Council orders. This concept of public or sovereign ownership of fish and game is merely declaratory of the common law; it is independent of the public's right to hunt or fish, and extends to private lands and private inland waters. * * *"

(Emphasis added)

The question, then, is whether the legislature has delegated to the Division of Wildlife the authority to control or limit hunting on private property where such limitation is not uniformly applied throughout the state.

Section 1531.08, Revised Code, provides:

"* * * the chief of the division of wildlife has authority and control in all matters pertaining to the protection, preservation, propagation, possession, and management of the wild animals and may issue temporary written orders for management of such wild animals. * * *

"The chief may establish, modify, rescind, and enforce orders throughout the state or in any part or waters thereof as provided by sections 1531.08 to 1531.12, inclusive, and other sections, of the Revised Code. Such orders shall be based upon the public hearing and investigation provided in this section, including among other things, the distribution, abundance, breeding conditions, food, cover, life history, and economic importance of the wild animals involved, together with the influence of topography, soil, weather, and other nonliving and living things on these wild animals, and whether or not such animals are materially destroying property or are otherwise becoming a nuisance or the sexes are not properly balanced or the natural food supply is insufficient or additional numbers may be taken without depleting the brood stock.

"All orders shall clearly and distinctly describe and set forth the waters or area or part thereof affected by each such order and whether such order is applicable to all * * * game, or only to certain kinds of species designated therein. * * *

"The chief may regulate:

"(A) Taking and possessing clams or mussels, crayfish, aquatic insects, fish, frogs, turtles, and games, at any time and place or in any number, quantity, or length, and in any manner, and with such devices as it prescribes;

* * * * *
(Emphasis added)

Section 1533.02, Revised Code, sets up fishing and trapping districts and specifies fishing, trapping and hunting seasons for game in Ohio. It is provided therein, however:

* * * * *

"(B) All species of game birds and game quadrupeds throughout the state may be taken and

possessed only according to the following schedule or as otherwise provided in such sections or division order."

(Emphasis added)

Further, Section 1531.11, Revised Code, provides:

"No person shall take, kill, possess, transport, buy or sell any clams and mussels, crayfish, aquatic insects, fish, frogs, turtles, or game contrary to any order, rule, or regulation of the division of wildlife made in conformity to law."

Upon examination of the above quoted statutes I think it clear that the Division of Wildlife, through the chief of the division, has the authority to manage by rule or regulation the taking or possession of "wild animals" throughout the state or in any part of the state, and in an area embracing private property. This control could take the form of a complete temporary prohibition of hunting in a given area. The action may not be arbitrary, however, but must be for cause for the protection, preservation and propagation of wild animals throughout the state or in a part of the state.

The conclusion that the chief of the division has authority to make orders controlling the taking or possession of wild animals on a state-wide or area basis should not be construed to mean that the enforcement officers in any way share in this power. The officers are merely the enforcement branch of the division and can only enforce those rules lawfully made by the chief of the division.

Accordingly, and in specific answer to your question, you are advised that the Chief of the Division of Wildlife, acting pursuant to Section 1531.08, Revised Code, and in conformity to this section and Sections 1531.09 to 1531.12, inclusive, Revised Code, has authority to limit the hunting of wild animals in an area including private property even though such limitation is not uniformly applied throughout the state.