

If the accused cannot be found, or his bondsmen fail to produce him, the court should order the bond forfeited in open court and same should be collected as provided by law.

See sections 13545, 13546, 13547, 13548 and 13550-1 (109 O. L. 85), General Code.

If the accused surrenders to the court to serve his sentence, or pays the fine and costs assessed, the bond for error proceedings need not be forfeited or collected.

Your questions should, therefore, be answered as follows:

1. Sections 13698, 12270 and 6212-20, General Code, place a time limit for the prosecuting of error proceedings from the municipal court of Cincinnati to the common pleas court of Hamilton county, Ohio.

2. If the defendant fails to prosecute error within the time limit, the court should order his bond forfeited and should certify same to the county auditor for collection by the county prosecutor.

3. If the defendant fails to prosecute error, the court may accept him to serve sentence without forfeiting his bond for error proceedings.

4. If the defendant pay his fine and costs, after filing bond for error proceedings, the court may accept same without forfeiting his bond.

Respectfully,

C. C. CRABBE,

Attorney General.

2526.

EFFECTIVE DATE OF FISHING LICENSE LAW—SECTION 1430 G. C.
CONSTRUED.

SYLLABUS:

Amended senate bill No. 4 is an act providing for a tax levy and is, therefore, within the provisions of section 1d of article 2 of the constitution of Ohio. Said act went into immediate effect upon its passage, notwithstanding the objection of the governor, on April 17, 1925.

COLUMBUS, OHIO, June 1, 1925.

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

DEAR SIR:—I am in receipt of your communication as follows:

“Re: (Amended senate bill No. 4.) An act to amend section 1430 of the General Code, relative to fishing license.

“Your official opinion is hereby requested as to the date upon which the provisions of the above act become effective.”

Your question is whether this act is an act providing for a tax levy under section 1-D of article 2 of the constitution of Ohio, and therefore goes into immediate effect, or whether the same is subject to referendum, and therefore, not effective until ninety days after it shall have been filed in the office of the secretary of state.

Section 1430 G. C. of Ohio, as amended in amended senate bill No. 4 provides:

“Fishing License. No person shall take or catch any fish by angling with reel and rod in any of the waters of the state of Ohio, or engage in fishing with reel and rod in such waters without first having procured a li-

cense so to do. Said license shall be procured in the manner provided for taking out hunting and trapping licenses. The applicant shall pay the clerk having authority to issue such license, the sum of two dollars, if a non-resident, and the sum of one dollar, if a resident of Ohio, as a license fee therefor, together with the sum of twenty-five cents if a non-resident and ten cents if a resident, as a fee to the clerk; provided, however, that any person under the age of eighteen years may take or catch fish by angling without a license. The provisions of the hunting and trapping license fee section of this state insofar as the same are applicable to the license fees herein provided for shall apply to all licenses under this section; provided, however, that in addition to the clerk of courts, village and township clerk, the chief of the fish and game division be empowered to permit responsible persons in each municipality, village and township to issue fishing licenses. All money derived from such licenses are hereby appropriated for the use of the director of agriculture for the protection, propagation and preservation of fish, including the establishment, operation and maintenance of fish hatcheries, the leasing, purchasing or otherwise acquiring title to land for said hatcheries, constructing fish chutes and dams and such other methods of fish propagation and fish culture as shall be approved by the said director.

“(a) Owners of lands over, through, upon or along which any water shall flow or stand, together with the members of the immediate families of such owners, shall have the right to take or catch fish of the kind lawfully permitted to be taken or caught therefrom, without procuring the license herein provided for; and provided that such exemption from the license herein provided for shall extend to tenants actually residing upon such lands, and to the members of the immediate families of such tenants. Whoever violates any of the provisions of this section shall be fined not less than twenty-five dollars nor more than two hundred dollars and the cost of prosecution.”

Section 1-D of the constitution of the state of Ohio provides:

“Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum. (Adopted Sept. 3, 1912.)”

The question naturally arises whether this act is a tax or whether the same is a license such as is usually called a police regulation. Upon this question it is believed that there can be little doubt. In the case of *Mays vs. Cincinnati*, 1-O. S., page 268, on page 273, the court says:

“Was the sum demanded by the ordinance for the license to trade, a tax? The sum required is limited only by the discretion of the council; but whatever it may be, it goes into the city treasury and constitutes a part of its general fund. The term has been correctly defined to be one of general

import, including almost every species of imposition on persons or property for supplying public treasury, as tolls, tribute, subsidy, excise, impost or customs. In a more limited sense, it is the sum laid for the same purpose upon polls, lands, houses, personal property, professions and occupations. Whether regarded in the larger or more limited sense, the sum here exacted is clearly included. A license may include a tax, or it may not. If the exaction goes no further than to cover the necessary expenses of issuing it, it does not; but if it is made a means of supplying money for the public treasury, we agree with the court in *State vs. Roberts II Gill and Johns, 506*, that it 'is a tax, is too palpable for discussion.' "

A consideration of section 1430 G. C. shows that the money derived from such allowances are appropriated for the use of the director of agriculture for the protection, propagation, and preservation of fish, including the establishing, operation and maintenance of fish hatcheries, the leasing, purchasing, or otherwise acquiring title to land for said hatcheries, constructing fish chutes and dams and such other methods of fish propagation and fish culture as shall be approved by said director. In this section it will be seen that the license is made a means of supplying money for the public treasury and, therefore, under the rule laid down in *Mays vs. Cincinnati, supra.*, the same is a tax.

The tax imposed upon the privilege by amended senate bill No. 4 cannot be distinguished from the tax imposed under house bill No. 44, which act was construed in *State ex rel Janes vs. Brown*, secretary of state, in case No. 19106, decided by the supreme court May 19, 1925. *Robinson, J.*, there said:

"The tax is upon the enjoyment of the privilege of using motor fuel in traveling upon the highways and streets of the state, and comes clearly within the definition of an excise tax as defined by this court in the case of *Saviers vs. Smith, supra.*

" 'An excise is a tax imposed on the performance of an act, the engaging in an occupation or the enjoyment of a privilege, and by the provisions of section 10, article XII of the constitution, specific authority has been conferred for the levying of such tax. * * *

" 'Under the general grant of legislative power conferred by section 1, article II of the constitution the legislature may tax rights, privileges and franchises.' "

It may be pointed out that the tax upon this privilege goes entirely to the purposes for which it is appropriated in the act, the expense of the administration of the act being provided, by a small fee of ten cents, in the case of a resident, and twenty-five cents in the case of a non-resident, payable to the clerk issuing the license. The fees received are applied to a public purpose and, according to the express provisions of section 1d, article 2, of the constitution, was not subject to the referendum and went into immediate effect upon its passage, notwithstanding the objections of the governor, on April 17, 1925.

Respectfully,
C. C. CRABBE,
Attorney General.