

There is here express authority to purchase land with a building thereon for any lawful purpose. In the event a building suitable for such memorial were standing on land purchased, it could not be said that such purchase were for an unlawful purpose. It should also be noted that under Section 3615 G. C., defining general powers of a municipality, it is provided that each municipality may "acquire property by purchase * * * for any municipal purpose authorized by law."

Specifically answering your question I am of the opinion that a municipality may issue bonds for the purpose of acquiring by purchase, a building and ground for a soldiers' and sailors' memorial.

Respectfully,
GILBERT BETTMAN,
Attorney General.

815.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
LORAIN COUNTY.

COLUMBUS, OHIO, August 31, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

816.

LICENSE—NOT REQUIRED OF PERSONS FISHING IN PRIVATE
ARTIFICIAL LAKE.

SYLLABUS:

Persons engaged in fishing by angling with reel and rod in a privately owned lake, pond or other body of water which has no communication with any other body of water through which fish are accustomed to pass, are not required to procure a license, as provided in Section 1430, General Code.

COLUMBUS, OHIO, September 3, 1929.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

"Section 1430 of the General Code of Ohio relative to fishing license provides in part as follows:

'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 license so to do,' etc.

Is this law applicable to fishermen who have paid a fee to the owners of an artificial lake or pond for the privilege of fishing there?

The case in question arises from a gravel pit which now being in disuse

and having filled with water is being stocked with fish. The gravel pit company is now charging a fee of one dollar for the privilege of fishing and they maintain that the fishers are not required by law to secure a license."

Section 1430 of the General Code provides as follows:

"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 license so to do."

The waters of Ohio, for the purpose of the fishing act, are divided into two districts, the Lake Erie fishing district and the inland fishing district. These districts are defined by Section 1411 of the General Code, which reads as follows:

"The waters of Lake Erie, the waters of Sandusky Bay, as far west as a straight line drawn from the mouth of Tommy Creek to Slate's Point and as far east as one-fourth of a mile from the mouth of the Clack Channel, and the waters of the Maumee Bay up to a point north of Toledo commonly known as Presque Isle, are in and shall be known as The Lake Erie Fishing District. All other waters over which the State of Ohio has jurisdiction, whether lakes, rivers, creeks, or reservoirs, or whether natural or artificial, including East Harbor, West Harbor, Middle Harbor, in Ottawa County, and the waters of Ten Mile Creek lying within this state are in and shall be known as the Inland Fishing District."

You will observe from a reading of Section 1411 of the General Code that the inland fishing district includes all other waters over which the State of Ohio has jurisdiction, whether lakes, rivers, creeks, or reservoirs, or whether natural or artificial. Therefore, your question resolves itself into this inquiry: Has the State of Ohio jurisdiction over an artificial lake or pond which is privately owned and stocked with fish by its owner?

I assume, for the purpose of this discussion, that the pond or lake or gravel pit, to which you refer, is entirely enclosed by the owner's land and has no communication with any other body of water through which fish are accustomed to pass.

In the case of *Lembeck vs. Nye*, reported in 47 O. S. 336, the court, in the first branch of the syllabus, held as follows:

"A non-navigable inland lake is the subject of private ownership; and where it is so owned, neither the public, nor an owner of adjacent lands, whose title extends only to the margin thereof, have a right to boat upon, or take fish from, its waters."

In the case of *State vs. Roberts*, 59 N. H., p. 257, the court in the opinion says:

"The right to have migratory fish pass in their accustomed course up and down river and streams is a public right, which may be regulated and protected by the Legislature, and, so far as the waters of this state are common passage-ways for fish, they are of a public character, and subject to legislative control. The taking and killing of certain kinds of fish and game at certain seasons of the year tend to the destruction of the privilege by the destruction consequent upon the unrestrained exercise of the right. This is regarded as injurious to the community, and therefore it is within the authority of the Legislature to impose restrictions and limitations upon the time and manner of taking fish and game considered valuable as articles of food or merchandise. For this purpose fish and game laws are enacted."

The court further says as follows:

"But while the Legislature has power to regulate and limit the time and manner of taking fish in waters which are public breeding-places or passage-ways for fish, it has not assumed to interfere with the privileges of the owners of private ponds having no communication through which fish are accustomed to pass to other waters. Such ponds, whether natural or artificial, are regarded as private property, and the owners may take fish therefrom whenever they choose, without restraint from any legislative enactment, since the exercise of this right in no way interferes with the rights of others."

It appears to me that a lake or pond or other body of water which is privately owned is under the control and jurisdiction of its owners and the State of Ohio has no jurisdiction over it for the purpose of regulating fishing therein, unless such bodies of water have some communication with other bodies of water through which fish are accustomed to pass.

Specifically answering your inquiry, I am of the opinion that persons engaged in fishing by angling with reel and rod in a privately owned lake, pond or other body of water which has no communication with any other body of water through which fish are accustomed to pass, are not required to procure a license, as provided in Section 1430, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

817.

COUNTY RECORDER—NO FEE CHARGEABLE FOR FILING LIENS DESIGNATED IN SECTION 13435-5, GENERAL CODE.

SYLLABUS:

The phrase "such liens", as used in Section 13435-5, General Code, refers to the lien described with particularity in the former part of the section and therefore the Legislature, by its language employed, failed to provide a fee for recording, filing, indexing and canceling the same.

COLUMBUS, OHIO, September 3, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

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

"Section 13435-5 of the General Code, as enacted by the 88th General Assembly, effective July 1, 1929, being part of the Code of Criminal Procedure of Ohio, reads as follows:

'The recorder of the county in which the property of the surety is located, shall properly keep and file all such notices of liens and notices of discharges as hereinbefore provided, as may be filed with him, and shall keep in addition thereto, a book or record in which he shall properly index such notices of liens and notices of discharges, as they may be filed with him. Such recorder shall receive from the county treasurer such fees as are provided by law for such recording, filing, indexing and canceling such liens to be paid on the certificate of the clerk approved by the court.'