

483.

FISHING SEASON—LAKE ERIE DISTRICT—NET FISHING.

SYLLABUS:

1. *The provisions of Section 1422, General Code, are mandatory and must be strictly construed.*
2. *The Conservation Commissioner has no authority to open the spring fishing season for the Lake Erie Fishing District, or in such other waters wherein fishing with nets is licensed by law, prior to the 15th day of March of each year.*

COLUMBUS, OHIO, April 19, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

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

“As you undoubtedly know, various states and provinces bordering on Lake Erie have regulations pertaining to commercial fishing which differ materially. In this respect, the Conservation Commissioner of the State of Ohio has on numerous occasions been requested to open the commercial fishing season for Ohio prior to March 15th as is prescribed by statute. This it appears at many times is almost necessary in order that the Ohio fishermen will not be penalized and in order that these regulations will conform with those on the other agencies bordering Lake Erie.

Will you please give us your opinion as to whether or not authority is vested in the Commissioner of Conservation to grant this concession to the Ohio commercial fishermen on Lake Erie, if he so desires?”

Section 1422, General Code, provides as follows:

“For the Lake Erie fishing district and in such other waters wherein fishing with nets is licensed by law, there shall be two fishing seasons for residents, the spring fishing season, beginning on the fifteenth day of March and including and closing on the thirty-first day of August and the fall fishing season, beginning on the first day of September and including and closing on the thirtieth day of November; and there shall be one fishing season for non-residents beginning on the fifteenth

day of March and including and closing on the thirtieth day of November.

No person shall draw, set, place, locate, or maintain any fish net whatever, except a minnow net, in the Lake Erie fishing district or in any other waters of this state wherein fishing with nets is licensed by law, between the first day of December and the fourteenth day of March, next following, both dates inclusive."

The question presented in your inquiry necessitates the placing of a proper construction upon the provisions of the section above cited, in an endeavor to ascertain whether the provisions thereof are of a mandatory or directory character.

In so far as I am able to determine, there is no universal rule or absolute test by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. I am aware that there are a great many statutes, in which time is fixed for the doing of a certain thing and in which time is of the essence of the matter, and accordingly, such statutes must be considered mandatory. Conversely, there are many statutes where the time designated is not of the essence of the matter, and, in such instances, the provisions thereof are considered directory. However, in the determination of this question, as of every other question of statutory construction, the paramount object is to ascertain the legislative intent from a consideration of the entire statute.

In Volume 37, Ohio Jurisprudence, at page 332, the following text is found relative to the consideration that should be given to the provisions of a statute in determining whether or not the provisions thereof are directory or mandatory. It reads as follows:

"The importance of the provision in question is sometimes taken into consideration in determining whether it is mandatory or directory. Thus, the principle has been frequently promulgated that certain acts required to be done by law are imperative where they are the essence of the thing so required—or, in other words, where they are essential to accomplish the object and intent of the law—and that those provisions are directory which relate to some comparatively immaterial matter which is not of the essence of the thing done—or, as sometimes stated, where compliance is a matter of convenience rather than substance."

In this respect, your attention is also directed to the case of *Devine vs. State, ex rel. Tucker, Jr.* 105 O. S. 285, the first branch of the syllabus holding as follows:

“An act of the general assembly will not be regarded as directory or discretionary as to those upon whom it is intended to operate, unless such directory or discretionary character clearly appears from the entire text of the act.”

Surely, from a reading of Section 1422, *supra*, it cannot be said that the provisions thereof are of a directory nature. On the contrary, the language employed therein is mandatory and admits of no other construction than that of strict compliance with the terms and provisions thereof.

It is therefore my opinion, in specific answer to your question, that the Conservation Commissioner has no authority to open the spring fishing season for the Lake Erie Fishing District, or in such other waters wherein fishing with nets is licensed by law, prior to the 15th day of March of each year.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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APPROVAL—BONDS OF COLUMBUS CITY SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO, \$25,000.00.

COLUMBUS, OHIO, April 19, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Columbus City School Dist., Franklin County, Ohio, \$25,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated December 19, 1921. The transcript relative to this issue was approved by this office in an opinion rendered to the State Teachers Retirement System under date of December 4, 1934, being Opinion No. 3559.