

for performing the duties prescribed in the section hereinbefore quoted. Said section reads in part as follows :

“For services in respect to chattel mortgages, or instruments for conditional sales, as provided in this chapter, the officer shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for searching each paper, six cents; for making the entries upon the filing of an instrument, six cents for each party thereto; \* \* \* ”

In addition to the fee allowed for filing each instrument, and the fee for searching each paper, there is a fee for making the entries upon the filing of said instrument “for each party thereto.” It will be noted that under the provisions of Section 8562, supra, the duty of the county recorder is to make an entry in his book of the names of the parties thereto and to repeat said entry under the name of every party thereto. It will also be noted that under the provisions of Section 8572, supra, the county recorder is authorized to charge in addition to the fees for filing the instrument and searching each paper, a fee for each party thereto. It is evident that in filing chattel mortgages and in making the entries required by law the county recorder is authorized to consider the parties to the chattel mortgage and the amount of his fees in such cases is based upon the number of the parties to said instrument.

It is therefore my opinion, specifically answering your question, that the language used in the instant chattel mortgage is insufficient to show the intention of the owner thereof to transfer or assign the same to the Universal Credit Company, and said company is not a party to said instrument, and it is therefore not necessary for the county recorder to index the name of said company.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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526.

SQUIRRELS—LEGALLY OBTAINED OUTSIDE OHIO—MAY BE POSSESSED ALIVE IN ENCLOSURES AT ANY TIME AS PETS.

*SYLLABUS:*

*Under Section 1400 of the General Code of Ohio, squirrels lawfully purchased or taken outside of the State of Ohio and brought into Ohio may be possessed alive in enclosures at any time as pets.*

COLUMBUS, OHIO, June 15, 1929.

HON. PERRY L. GREEN, *Director Department of Agriculture, Columbus, Ohio.*

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

“The following is a letter from the Chief of the Division of Fish and Game:

‘Would suggest that you ask the Attorney General for a ruling as to whether or not it is permissible to keep squirrels in enclosures as pets when bought outside the state, as Section 1400 states that squirrels, legally taken, may be possessed alive at any time as pets, while Section 1397 states that

squirrels taken within or without the state, shall not be bought or sold at any time. Sale also includes barter, exchange or give away.

It seems to me that this is a little complex and in order that we may be in a position to definitely advise, I feel that a ruling from the Attorney General would be in order.'

We would respectfully request your opinion in answer to his request."

Before entering into a discussion pertaining to your inquiry, your attention is directed to the fact that Section 1397 of the General Code has been amended by House Bill 129, passed by the 88th General Assembly. This act becomes effective July 26, 1929. However, the changes made by the Legislature in Section 1397, General Code, do not affect your inquiry.

Section 1400 of the General Code provides as follows:

"Squirrels, rabbits, raccoons and deer legally taken, may be possessed alive in enclosures at any time as pets."

Section 1397 of the General Code now provides:

"a. Open season. Squirrels may be taken and possessed from the fifteenth day of September to the twentieth day of October only, both inclusive.

b. Limit. A person may take in one day and have in his possession at one time, not more than five squirrels.

c. Sale prohibited. Squirrels whether taken within or without the state shall not be bought or sold at any time. Each squirrel taken or had in possession, contrary to the provisions of this section, shall constitute a separate offense."

While Section 1397, paragraph c, provides that squirrels, whether taken within or without the state, shall not be bought or sold at any time, the prohibition to purchase or sell refers only to purchase and sale within the State of Ohio. In other words, the provision of this statute does not attempt to prohibit the purchase or sale of squirrels outside the State of Ohio. However, the possession of squirrels in closed season or possessing more than the limited number provided by Section 1397, General Code, is a violation regardless of whether squirrels are taken or purchased outside of the State of Ohio.

In the case of *Roth vs. State*, 51 O. S. 209, the syllabus reads:

"It is an offense, under Section 6954, of the Revised Statutes, to sell quail in this state, except between the tenth day of November and the fifteenth day of December, though such quail were killed outside of the state, and where it was lawful to kill the same. The section is constitutional."

In the case of *New York ex rel. Silz vs. Hesterberg, Sheriff of Kings County*, 211 U. S. p. 31, the second branch of the syllabus reads as follows:

"It is within the police power of a state to prohibit possession of game during the closed season even if brought from without the state."

The fourth branch of the syllabus reads:

"The sections of the Forest Fish and Game Law of the State of New York which prohibit possession of game during the closed season, are a

valid exercise of the police power of the state and are not in conflict with the Constitution of the United States, either as depriving persons importing game of their property without due process of law, or as an interference with, or a regulation of, interstate commerce. *Geer vs. Connecticut*, 161 U. S. 519."

The purpose of the fish and game act was primarily to protect and preserve the wild game and fish of Ohio. To accomplish this result the Legislature limited the time during which wild animals could be caught or killed and also limited the number of wild animals that could be taken and possessed in any one day. To prevent the killing of these animals in large numbers, the sale and purchase of them were also prohibited. For this reason our Legislature has made it unlawful to have in possession during the closed season, or buy or sell, game killed in this or any other state. If it was permitted to bring game from another state into this state at any time and for every purpose, it would be almost impossible to prevent the destruction of our own game during such periods, because it would be difficult to identify the game of this state from the game taken in other states. However, to purchase and take squirrels outside of the State of Ohio, where it is lawful to do so, and bring them in and possess them alive as pets in the State of Ohio would not in any way defeat the purpose of this act.

Section 1400 of the General Code, *supra*, permits squirrels to be possessed alive at any time as pets if they are legally taken, and it seems to me that where squirrels are purchased or taken alive in another state where it is lawful to do so and brought into the State of Ohio to be possessed as pets, such purchase or taking is included in the term "legally taken," as required by Section 1400 of the General Code.

I am, therefore, of the opinion that squirrels lawfully purchased or taken outside of the State of Ohio and brought into Ohio may be possessed alive in enclosures at any time as pets.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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527.

PRISONER—CRABBE ACT VIOLATOR INCARCERATED IN CITY WORKHOUSE—PUBLIC SAFETY DIRECTOR MAY PAROLE AFTER NOTICE TO TRIAL JUDGE—SPECIFIC CHARTER PROVISIONS CONSIDERED.

**SYLLABUS:**

*Upon notice to the trial judge, the director of public safety of the city whose charter provisions are under consideration may parole or release, according to law, a prisoner, under the provisions of Sections 4133, et seq., General Code, who is incarcerated in the city workhouse for the non-payment of fine and costs by reason of the violation of the liquor laws.*

COLUMBUS, OHIO, June 17, 1929.

HON. RUPERT R. BEETHAM, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, requesting my opinion, in the following language: