

evidenced by my approval endorsed upon the deed. Subject only to the exceptions above noted, I am approving the abstract of title submitted to me in connection with the purchase of this property and the same, together with the warranty deed, contract encumbrance record and other files, all of which are hereby approved, are herewith returned to you to the end that the transaction relating to the purchase of this property may be closed by you.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

126.

CONSERVATION COUNCIL—AUTHORITY—STREAM, RIVER
OR LAKE POLLUTION.

SYLLABUS:

Under the provisions of Section 1438-1, General Code, the Conservation Council has no authority, right or privilege in the prosecution of stream, river and lake pollution cases.

COLUMBUS, OHIO, February 15, 1937.

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

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

“The matter of stream, river and lake pollution is one that is rapidly becoming a very vital factor in the operation of the Division of Conservation, and we respectfully ask your opinion as to what authority, right and privilege the Division has in the prosecution of pollution cases.”

Section 1438-1 of the General Code, reads as follows:

“The conservation council shall have authority and control in all matters pertaining to the protection, preservation and propagation of song and insectivorous and game birds, wild animals and fish, except authority to change laws in the General Code covering commercial fishing in the Lake Erie fishing district, and in such other waters wherein fishing with nets is licensed by law,

within the state and in and upon the waters thereof. It shall enforce by proper legal action or proceeding the laws of the state for the protection, preservation and propagation of such birds, animals and havens for the propagation of fish and game, and, so far as funds are provided therefor, shall adopt and carry into effect such measures as it deems necessary in the performance of its duties.

The conservation council shall have and take the general care, protection and supervision of the state parks known as Lake St. Marys, Portage Lakes, Lake Loramie, Indian Lake, Buckeye Lake, Guilford Lake, and all other state parks and lands owned by the state or in which it is interested or may acquire or become interested, except lands, the care and supervision of which are vested in some other officer, body, board, association or organization.

It is the duty of the conservation council to plan, develop, formulate and institute programs and policies of the division of conservation and to establish such bureaus within the division as are approved by the governor.

The division of conservation is hereby authorized to and shall co-operate with the several state departments and officials in the conduct of matters in which the interests of the respective departments or officials overlap.

The conservation council shall report to the governor from time to time the results of its investigations concerning the natural resources of the state with recommendations of such measures as it deems necessary or suitable to conserve or develop said resources and preserve them as far as practicable.

The conservation council may make and establish such rules and regulations not inconsistent with law governing its organization and procedure and administration of the division of conservation as it may deem necessary or expedient."

By the provisions of the above statute, the Conservation Council shall have authority and control in all matters pertaining to the protection, preservation and propagation of fish and game within the state and in and upon the waters thereof. It shall also have the care, protection and supervision of state parks and lands owned by the state or in which it is interested or may acquire or become interested, and express powers are granted to the Conservation Council to carry into effect the duties imposed. However, it is obvious from a reading of this statute, that the Conservation Council is not clothed with any express authority or power in the prosecution of stream, river and lake pollution cases. It then be-

comes necessary to determine whether such authority or power is essential and necessary to carry out the express powers granted.

In the case of *State, ex rel. Clarke, vs. Cook, Auditor*, 105 O. S., 465, on page 467 it was stated that:

“The powers of administrative boards created by statute, are necessarily limited to such powers as are clearly and expressly granted by statute.”

The courts of this state have repeatedly and consistently held that powers conferred upon administrative boards must be strictly construed, so that only such powers may be exercised as are clearly comprehended within the statute, that is, such as are specifically and expressly conferred thereby or derived therefrom by necessary implication.

The Legislature of Ohio, having in mind the public welfare, did, by the enactment of sections 1249, et seq., General Code, confer upon the State Board of Health broad powers with reference to the purification of sewage, public water supplies and the protection of streams, rivers and lakes against pollution. By the enactment of these statutes adequate provisions have been made in this respect.

I am inclined to believe that the provisions of section 1438-1, General Code, cannot be interpreted as granting to the Conservation Council power in the prosecution of stream, river and lake pollution cases, as such a power is not necessary or essential in carrying into effect the express powers granted for the administration and enforcement of the conservation laws.

It is therefore my opinion, in specific answer to your question, that the Conservation Council has no authority, right or privilege in the prosecution of stream, river and lake pollution cases.

Respectfully,

HERBERT S. DUFFY,

Attorney General.