

The above bonds are undoubtedly executed pursuant to the provisions of sections 1183 and 1182-3, General Code, which state, insofar as pertinent:

Section 1183.

“* * Such resident district deputy directors shall * * give bond in the sum of five thousand dollars. * *”

Section 1182-3.

“* * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds, * * shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general, and be deposited with the secretary of state. * *.” (Words in parenthesis the writer’s.)

Finding the above listed bonds to have been properly executed pursuant to the above statutory provisions, I have approved the same as to form, and return them herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4503.

CONSERVATION COUNCIL—FUNDS DERIVED FROM HUNTERS AND TRAPPERS LICENSES MAY BE EXPENDED HOW—CONTROLLING BOARD MAY NOT TRANSFER FUNDS.

SYLLABUS:

1. *All the funds derived from the issuance of hunters and trappers licenses, fishing licenses and Lake Erie licenses during the biennium of 1935 and 1936, as well as any balances existing at the time of the passage of the General Appropriation Act of the 91st General Assembly, in what is usually called the Uses and Purposes Fund of the Division of Conservation, and the Fishing License Fund and the Lake Erie License Fund in the State Treasury, is available during this period for conservation purposes exclusively, as provided by law, and these funds may be expended by the Conservation Council for any purpose which the Conservation Council is authorized by law to expend funds, limited only by the provisions of the General Appropriation Act as to the amount of expenditures from these funds that may be expended for the purposes listed in said Act under the heads of various budget classifications, which items, except those vetoed by the Governor, may be changed by*

transfer or supplemented from the funds not specifically allocated by the Controlling Board.

2. *If there is any portion of these funds not specifically allocated to some named purpose included within the various budget classifications, as set out in the General Appropriation Act, excluding those vetoed by the Governor, the Controlling Board is empowered to allocate funds for the purpose of new projects within the intent and purpose of the law relating to the objects for which the Division of Conservation exists.*

3. *The Conservation Council may not expend funds for the purposes included within the purview of items set up in the General Appropriation Act to which funds had been allocated therein, which items were vetoed by the Governor, nor may the Controlling Board transfer funds for such purposes or authorize or approve expenditures for such purposes.*

COLUMBUS, OHIO, August 3, 1935.

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

DEAR SIR:— I am in receipt of your request for my opinion concerning “the legal status of the powers conferred upon the Conservation Council in House Bill No. 85, enacted February 27, 1935 and approved by the Governor March 7, 1935.”

I am informed that the question with which you are most immediately concerned, relates to the status of the funds which are available for the use of the Conservation Council in the performance of its functions and in pursuance of the provisions of said House Bill 85 of the 91st General Assembly. Stated more concretely, the question presented is, whether the Conservation Council is limited in the expenditure of the funds by the appropriation detailed as to various budget classifications, as made in the General Appropriation Act of the 91st General Assembly (House Bill 531) or whether it may expend all the funds in the State Treasury as they accrue from the issuance of hunters and trappers licenses and fishing licenses.

Said House Bill No. 85 is an Act in which is amended sections 1430 and 1433 of the General Code of Ohio.

Said Section, 1430 General Code, as so amended, provides for the issuance of fishing licenses, fixes the fees therefor, appropriates the monies received from such licenses for the use of the Conservation Council and provides for the annual budgeting by the Conservation Council of said funds. The pertinent part of the statute reads as follows:

“The provisions of sections 1432 and 1433 of the General Code in so far as the same are applicable to the license fees herein provided for shall apply to all license under this section. All

moneys derived from such licenses are hereby appropriated exclusively for the use of the conservation council for the purchase, protection, propagation, preservation, and stocking 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 other methods of fish propagation and fish culture, and for other proper conservation activities, and for the use as provided in sections 1438-1, 1441, 1442, and 1443 of the General Code.

The conservation council shall annually budget said funds or any part thereof and shall have exclusive authority to draw warrants upon such funds, no part of which shall be transferred to or withdrawn for the temporary or other use of any other department or division without the authorization and consent of the conservation council. ***"

Sections 1432 and 1433, General Code, referred to in Section 1430, General Code, supra, relates specifically to hunters' and trappers' licenses and the collection and disposition of the license fees derived from the issuance thereof. The provisions of Section 1432 are not pertinent to the question herein being considered. The pertinent portion of Section 1433, General Code, as amended in said House Bill No. 85, reads as follows:

"The clerks and other agents authorized to issue licenses shall issue them in consecutive order of their numbers as stamped on the left upper corner of each license with date and exact time of day of issue plainly written thereon and keep a record of such licenses issued, together with the names and addresses of the persons to whom issued, and shall transmit with their reports to the commissioner, the moneys received as license fees, and may include the amounts paid to clerks and other authorized agents as their fees, which shall be paid into the state treasury to the credit of a fund which is hereby appropriated exclusively for the use of the conservation council in the purchase, preservation, propagation, protection and stocking of birds, game birds, game and fur-bearing animals, for establishing and purchasing or otherwise acquiring title to lands for game preserves, and the conservation council is hereby empowered to organize such lands into state game sanctuaries and for hunting preserves under rules and regulations to be adopted by said conservation council, and the commissioner may employ on such preserves one or more keepers or protectors at such salary and with such duties, as may be prescribed by the conservation commissioner, and for use as provided in sections 1438-1, 1441, 1442 and 1443 of the General Code.

The conservation council shall annually budget said fund or any part thereof and shall have exclusive authority to draw warrants upon such funds, no part of which shall be transferred to or withdrawn for the temporary or other use of any other department or division without the authorization and consent of the conservation council. **''

Sections 1438-1, 1441, 1442 and 1443, General Code, which are referred to in the above sections 1430 and 1433, as amended in said House Bill 85, relate to the powers and duties of the conservation council and the Conservation Commissioner. Each of these sections are quite long and it is not necessary, for the purposes of this opinion, that they be quoted in full. It is sufficient to say that broad and sweeping powers are reposed in the conservation council and the Conservation Commissioner with respect to the matters committed to the care of the Division of Conservation. It is provided in Section 1438-1 that the conservation council shall have authority and control in all matters pertaining to the protection, preservation and propagation of birds, wild animals, game, fur-bearing animals, clams, mussels and fish, with certain exceptions named in the statute. It has authority to establish rules and regulations, any provision in the statute to the contrary notwithstanding, for the taking and hunting of game birds, clams, mussels, fur-bearing animals, game and fish. The care, protection and supervision of certain state parks is reposed in the conservation council. It is made the duty of the 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.

By the terms of Sections 1441 and 1442, General Code, the Conservation Commissioner, the Lake Erie Supervising Protector and the fish and game protectors, appointed by authority of law, are charged with the duty of enforcing the laws relating to the protection, preservation and propagation of birds, fish, game and fur-bearing animals. They may receive and execute warrants and other processes of law, issued in the enforcement of any law for the protection, preservation or propagation of birds, fish, game and fur-bearing animals and may make arrests.

Section 1443, General Code, relates the compensation and expenses of the members of the conservation council, the Conservation Commissioner, fish and game protectors and other employees of the Division of Conservation.

It will be observed from the provisions of Section 1433, General Code, which relates specifically to hunters' and trappers' licenses and the application of the fees derived from the issuance of those licenses, that the said fees "shall be paid into the State Treasury."

Said Section 1430, General Code, provides with respect to the fees derived from the issuance of fishing licenses that "the provisions of sections

* * * * and 1433 of the General Code, in so far as the same are applicable to the license fees herein provided for, shall apply to all license under this section." It follows that the fees for both hunters' and trappers' licenses and fishing licenses must be paid into the State Treasury. Having reached the State Treasury, these funds cannot be drawn therefrom, except in pursuance of a specific appropriation made by law.

Section 22 of Article 2 of the Constitution of Ohio provides:

"No money shall be drawn from the Treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

It will be observed, however, that these monies are appropriated by the terms of House Bill 85. Section 1430, General Code, provides with respect to fishing licenses:

" * * * * "

All moneys derived from such licenses are hereby appropriated exclusively for the use of the conservation council for the purchase, protection, propagation, preservation, and stocking 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 other methods of fish propagation and fish culture, and for other proper conservation activities, and for use as provided in sections 1438-1, 1441, 1442, and 1443 of the General Code. * * * "

Practically the same language is used in Section 1433, General Code, with respect to the appropriation of the funds derived from the issuance of hunters' and trappers' licenses for the use of the Conservation Council in the purchase, preservation, propagation, protection and stocking of birds, game birds, game and fur-bearing animals, and for establishing and purchasing or otherwise acquiring title to lands for game preservation and for use as provided in Section 1438-1, 1441, 1442 and 1443, General Code.

In previous opinions of this office, an appropriation of funds in the State Treasury made, as are the appropriations referred to above, has been recognized as satisfying the constitutional requirement of a "specific" appropriation and has been held to be a valid appropriation authorizing the withdrawal from the State Treasury of the funds so appropriated, for the purposes stated in the appropriation. See Opinions of the Attorney General for 1915, Vol. 2, p. 1871 and for 1934, Vol. I, p. 314.

It would not be contended by anyone, I assume, that appropriations such as those contained in Section 1430 and 1433, General Code, *supra*, are not

“specific” as to purpose. It is expressly and specifically provided that the funds appropriated are for the use of the conservation council in the performance of their duties, as provided by law. These appropriations could not be more specific in that regard. They are not “specific” as to the amounts appropriated, as these amounts could not, at the time of the appropriation, be ascertained, and, as stated above, it has been held that appropriations need not be “specific” in this respect, to meet the constitutional requirement of a “specific appropriation”, so long as the amount is thereafter ascertainable.

Under the terms of the appropriations as made in House Bill 85, the conservation council was thereby authorized to withdraw from the State Treasury all the funds accruing therein from the fees derived from the issuance of hunters’ and trappers’ licenses and fishing licenses after the effective date of the appropriation, and was not limited as to the amount of the expenditure of these funds for any one of the purposes for which the conservation council is authorized by law to expend monies.

By the passage of the General Appropriation Act of the 91st General Assembly (House Bill 531), by the terms of which the appropriations made in House Bill 85 were neither expressly nor impliedly repealed, but on the other hand their integrity was impliedly recognized and preserved, the appropriations made in said House Bill 85 are somewhat modified, in that limitations are placed on the amounts to be expended for certain purposes listed under budgetary classification heads within the different bureaus that have been established in the Division of Conservation. See General Appropriation Act, Pages 63 to 76. Some of the items of this classification, however, were vetoed by the Governor. See General Appropriation Act, Pages 192, 193 and 194. Each item as set out in the General Appropriation Act, except those which were vetoed by the Governor, is subject to change and may be supplemented, or changed by transfers to or from the same by action of the Controlling Board.

I am advised that on January 1, 1934 and on the date of the passage of House Bill 85, as well as at the time of the passage of the General Appropriation Act, there were balances in the State Treasury in the funds made up of the proceeds of the fees derived from the issuance of hunters’ and trappers’ licenses and fishing licenses, which had not been expended and which, under the provisions of law then in force, could not be appropriated or expended for any purpose other than conservation purposes. For convenience, the fund which had accumulated from the proceeds of hunters’ and trappers’ licenses, had come to be known as the “Uses and Purposes Fund of the Division of Conservation”.

The General Appropriation Act appropriated all these balances and all monies *credited and to be credited* to said funds during the life of the appropriation, for conservaton purposes and authorizes the Controlling Board to transfer from one budget classification, as set out in the Act, to another, and

to supplement the amounts appropriated for the several purposes, as classified therein, from the monies in the said funds, and in its discretion to allocate portions of these funds to new projects which are within the intent and purpose of the law. The total amount of the several items of appropriation to the Division of Conservation, including the Bureau of Lakes and Parks, as set out in the General Appropriation Act, is \$1,522,966, and it is expressly stated in the Act that this amount is "appropriated from hunting and fishing licenses and Lake Erie license fees". It is further provided:

"The appropriations made to the Bureau of Lakes and Parks amounting to \$386,150, are hereby appropriated from the balance in the Uses and Purposes Fund of the Division of Conservation.

There is hereby appropriated all balances in the Uses and Purposes Funds; Lake Erie Fund and Fishing License Fund on Dec. 31, 1934, together with all monies credited and to be credited to said funds during the period covered by this Act. Such funds shall be available for the use of the Division of Conservation for the purposes specified by law, and the Controlling Board herein provided for is authorized to approve transfer to the various budget classifications under personal service, maintenance and additions and betterments to supplement the specific appropriations made by the legislature, or to new projects within the intent and purpose of the law."

Of course, the Conservation Council may not expend any funds for purposes included within the purview of items set up in the General Appropriation Act and to which monies have been allocated, which items were vetoed by the Governor, nor may the Controlling Board transfer funds for such purposes or authorize or approve expenditures for such purposes. *State ex rel. Public Utilities Commission vs. Controlling Board of Ohio, et al*, decided July 10, 1935. 130 O. S. 127.

In conclusion, I am of the opinion that:

1. All the funds derived from the issuance of hunters' and trappers' licenses, fishing licenses and Lake Erie licenses during the biennium of 1935 and 1936, as well as any balances existing at the time of the passage of the General Appropriation Act of the 91st General Assembly, in what is usually called the Uses and Purposes Fund of the Division of Conservation, and the Fishing License Fund and the Lake Erie License Fund in the State Treasury, is available during this period for conservation purposes exclusively, as provided by law and that these funds may be expended by the Conservation Council for any purpose which the Conservation Council is authorized by law to expend funds, limited only by the provisions of the General Appropriation Act as to the amount of expenditures from these funds that may be

expended for the purposes listed in said Act under the heads of various budget classifications, which items, except those vetoed by the Governor, may be changed by transfer or supplemented from the funds not specifically allocated by the Controlling Board.

2. If there is any portion of these funds not specifically allocated to some named purpose included within the various budget classifications, as set out in the General Appropriation Act, excluding those vetoed by the Governor, the Controlling Board is empowered to allocate funds for the purpose of new projects within the intent and purpose of the law relating to the objects for which the Division of Conservation exists.

3. The Conservation Council may not expend funds for the purposes included within the purview of items set up in the General Appropriation Act to which funds had been allocated therein, which items were vetoed by the Governor, nor may the Controlling Board transfer funds for such purposes or authorize or approve expenditures for such purposes.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4504.

DISAPPROVAL, BONDS OF BEDFORD TOWNSHIP RURAL
SCHOOL DISTRICT, MEIGS COUNTY, OHIO, \$3003.67.

COLUMBUS, OHIO, August 3, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4505.

APPROVAL, NOTES OF NEWPORT RURAL SCHOOL DIS-
TRICT, ADAMS COUNTY, OHIO, \$1,139.00.

COLUMBUS, OHIO, August 5, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.