1393.

DEPUTY SEALER OF WEIGHTS AND MEASURES—MUST CHARGE FOR SERVICES.

SYLLABUS:

Under the provisions of Section 2623, General Code, providing that the county sealer of weights and measures may receive fees for his services, it is mandatory that such fees be charged.

COLUMBUS, OHIO, January 13, 1930.

HON. DEANE M. RICHMOND, *Prosecuting Attorney, London, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date, which reads as follows:

> "I respectfully request your opinion on the following matter, to-wit:
>
> I understand that the deputy sealer of weights and measures in some counties charge for their services as provided by General Code, Section 2623, while other deputy sealers make no charge for such services.
>
> Query: Is it optional with the deputy sealer of weights and measures whether he shall or shall not charge for such services?"

Section 2615, General Code, provides that the county auditor shall be the county sealer of weights and measures, and that it shall be his duty to see that all state laws relating to weights and measures are strictly enforced. Section 2622, General Code, authorizes the auditor to appoint a deputy "who shall compare weights and measures wherever the same are used or maintained for use within his county," at a salary fixed by the county commissioners, to be paid by the county, "which salary shall be instead of all fees or charges otherwise allowed by law."

Section 2623 of the General Code, reads as follows:

> "Each sealer may receive for his services, the following: For sealing and marking every beam, ten cents; for sealing and marking measures for extension, at the rate of ten cents per yard, not exceeding twenty-five cents for any one measure; for sealing and marking each weight, five cents; for sealing and marking liquid or dry measures, if of one gallon or more, ten cents, and if less than one gallon, five cents; and a reasonable compensation for marking such weights and measures, so as to conform to the standards."

It is a well recognized principle of statutory construction that, where authority is conferred to perform an act in which the public or third parties are interested, the word "may" is often to be interpreted as imperative in the sense of "shall" or "must," where the context suggests such to have been the legislative intent.

In *Pope* vs. *Pollock,* 1 O. C. C. 347, the court had before it the question whether under Section 6578 of the Revised Statutes, it is imperative on the court to set aside a judgment rendered in default if the affidavit requesting such action sets forth a good reason for absence of the defendant, the statute reading that the magistrate "may" set aside such judgment. The court said:

> "We think the statute is imperative. Although the language is 'may set aside,' it should be construed as if written 'shall set aside.'"

Thus, as stated in Bouvier's Law Dictionary, "whenever a statute directs the doing of a thing for the sake of justice or popular good, the word 'may' is the same

as 'shall.'" And, again, "the words 'shall' and 'may' in general acts of the Legislature are to be construed imperatively."

In *Lessee of Swazey's Heirs* vs. *Blackman,* 8 Ohio 19, Judge Grimke said:

> " * * * and 'may' means 'must' in all those cases where the public are interested, or where a matter of public policy, and not merely of private right, is involved."

This case was cited with approval by Chief Justice Marshall in *Stanton* vs. *Realty Co.,* 117 O. S. 355.

In *Schuyler Co.* vs. *Mercer Co.,* 5 Cowen, 24, the rule on this subject was said to be "that the word 'may' means 'must' or 'shall' only, in cases where the public interests or rights are concerned, and where the public or third persons have a claim *de jure* that the power shall be exercised."

The above language in the Schuyler case was quoted with approval by Judge Peck in *Sifford et al.* vs. *Beatty,* 12 O. S. 194.

I am therefore of the opinion that it is mandatory that the county sealer of weights and measures charge the fees prescribed by statute for his services.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1394.

FISHING DEVICES—PROHIBITED BY LAWS OF OHIO AND STATES HAVING JURISDICTION OVER OHIO RIVER—MAY NOT BE POSSESSED WITHIN ONE MILE OF SUCH RIVER—CONFISCATION.

SYLLABUS:

Under the terms of Section 1419 *of the General Code, persons are not permitted to possess, within one mile of the Ohio River, fishing devices that are prohibited by the laws of the State of Ohio and also by the laws of the states having jurisdiction over the Ohio River, and such devices when so possessed may be confiscated under the provisions of Section* 1450 *of the General Code.*

COLUMBUS, OHIO, January 13, 1930.

HON. JOHN W. THOMPSON, *Commissioner, Division of Conservation, Department of Agriculture, Columbus, Ohio.*

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

> "According to all of the information which we can receive, it would appear that the waters of the Ohio River belong to and are under the jurisdiction of the states across these waters from Ohio. In other words, the State of Ohio has no jurisdiction over the waters of the Ohio River.
>
> It comes to our attention that many infractions of the laws of other states are being committed in these waters, while the illegal devices with which these violations are committed are kept on the Ohio side of the river. Section 1419 reads as follows:
>
> 'Nothing in this act shall apply to nets, traps, or other devices for catching fish, in the possession of the owner of a private artificial fish pond or privately owned lake for use in such pond or lake only, or to fish nets, fish traps, or