3989.

CITY BOARD OF HEALTH—UNAUTHORIZED TO RENT QUARTERS—CITY COUNCIL MUST PROVIDE SUITABLE QUARTERS.

SYLLABUS:

The council of a municipality must provide suitable quarters for the board of health of a city health district, and consequently a city board of health has no authority to rent the same.

COLUMBUS, OHIO, January 25, 1932.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads:

> "Section 1261-36 of the General Code, authorizes the council of a city to furnish suitable quarters for the board of health of a city health district.
>
> In the city of Dover the only space available in a city owned building is the council chamber, and it is alleged that this room is unsuitable for offices for the board of health because it cannot be subdivided, is difficult to heat, and because of its location is difficult of access for mothers and others who come to the board of health for service.
>
> The board of health has asked this department for an opinion as to whether the funds of the board of health can be used to rent suitable quarters where such quarters are not provided by the city council."

Section 1261-36, General Code, to which you refer, reads as follows:

> "The county commissioners of any county or the council of any city may furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of such county or city in accordance with the provisions of this act."

The provisions of the law of Ohio relative to the powers and functions of boards of health of city health districts are found in Sections 4404 to 4476, inclusive, General Code, and there is no express statutory authority therein granting to a board of health of a city health district the power of renting quarters for its activities.

It should be noted from a reading of Section 1261-36, above quoted, that the word "may" is used therein. It is well settled in the State of Ohio that "The word 'may' when used in statutes which confer powers upon officers or official boards is construed to be the equivalent of 'shall' or 'must' where the public has an interest in the exercise of the powers conferred." *State, ex rel.* vs. *Evans,* 30 O. A. 419. See also *State, ex rel. Myers* vs. *Board of Education of Spencer Twp.,* 95 O. S. 367; *Stanton* vs. *Frankel Bros. Realty Co., et al.,* 117 O. S. 345.

There is no doubt but that public interest requires that a city board of health function and that facilities be furnished to the said board to carry out the duties imposed upon it by statute.

In this respect it is interesting to note the case of *State, ex rel. Ramey, et al.* vs. *Davis, et al.,* 119 O. S. 596, which holds in substance that mandamus will not

lie to compel county commissioners to provide quarters for a certain municipal court where the statutes creating said court require that the council of the city "shall furnish suitable accommodations for the municipal court", the inference being that where the legislature has imposed a duty upon a municipality it must perform the duty and another political subdivision, although interested in its performance, may not be compelled by a writ of mandamus to perform the duty.

Applying the rule of construction as above discussed to the word "may" as used in the section in question, the conclusion is impelled that the council of a municipality must provide suitable quarters for the board of health of a city health district and consequently a city board of health has no authority to rent the same.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3990.

DISPOSITION OF FINES—MINOR UNDER EIGHTEEN TRIED IN JUVENILE COURT FOR VIOLATION OF FISH AND GAME LAWS—SECTION 1445, G. C., INAPPLICABLE.

SYLLABUS:

The provisions of section 1445, *General Code, are not applicable to a proceeding had in a juvenile court against a minor offender under the age of eighteen years, who is charged with violating the fish and game laws of this state.*

COLUMBUS, OHIO, January 25, 1932.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter from the Division of Conservation, which reads as follows:

> "We have several cases where juvenile offenders, tried before Juvenile Courts for violations of the fish and game laws, have been guilty and sentenced to fines and costs.
>
> The fines and costs in such cases having been collected by such Juvenile Courts and said courts have not paid the fines collected into the Conservation office, the court claiming said fines should be turned into the County Treasurer's office, stating such cases as county cases. Affidavits were filed by regular Game Protectors and prosecution was made under our fish and game laws.
>
> The question now arises: 'Should such fines collected by Juvenile Courts be turned into the office of the Conservation Commissioner, or should same be turned into the County Treasury?'"

By virtue of the provisions of section 1445, General Code, all fines arising by reason of a conviction of a person violating the fish and game laws of this state are payable to the conservation commissioner, who, in turn, pays the same into the state treasury. Section 1445 reads in part as follows: