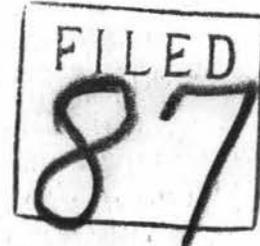


CONSERVATION COMMISSION: Agents may enter posted land in performance of duty.

March 21, 1949



Hon. Homer L. Swenson
Prosecuting Attorney
Wright County
Mountain Grove, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I have been informed that the State Conservation Commission has ruled that the gigging of fish is to be forbidden in the Gasconade water shed, in this County, which water shed includes Whetstone and Beaver Creeks and the Gasconade river proper.

"Since hearing of this new regulation some of the land owners along these streams have posted their property barring all fishermen and 'Game Wardens' which includes parties on float trips from one point to another. The local conservation agent informs me that eventually all of the land owners along these streams will post their lands as set out above.

"I have advised the local conservation agent that he may proceed to carry out his duties in spite of the posting by the owners until further notice from me.

"Your opinion on the above, relative to the power and right of the conservation agent, is hereby requested."

Agents of the Conservation Commission are the persons primarily charged with the duty of enforcing the laws of this state and the rules and regulations of the Conservation Commission pertaining to fish and wildlife. The Wildlife and Forestry Act, Laws of Missouri, 1945, page 664, sets out some of the powers and duties of such agents. Section 5 of the act authorizes them to make complaints and cause proceedings to be instituted against persons violating the act or the rules and regulations of the Conservation Commission; to search, without a warrant, any creel, container, game bag, hunting coat, or boat, in which they have reason to believe wildlife is unlawfully concealed; and, upon the issuance of a search warrant, to search dwellings, locker plants, motor vehicles, or express cars, in which they have reason to believe wildlife is illegally possessed or concealed. Section 6 of the act authorizes them to serve criminal process in cases of violation of the act or the rules and regulations of the Conservation Commission, and to arrest, without a warrant, any person caught by them or in their view violating the act or the rules and regulations of the Commission.

Obviously, if the agents of the Conservation Commission are to carry out their duties properly, they will find it necessary to enter upon privately owned lands. However, the law is well settled that an officer of the law, acting in the performance of his duties, will not be guilty of trespass by reason of his entering the lands of private persons. (52 Am. Jur., Trespass, Section 41, page 868; 63 C. J., Trespass, Section 121, page 960.) He may, of course, become guilty of trespass by acting in excess of his authority.

The fact that the land is posted with notices forbidding the entrance of "Game Wardens" would not alter the situation. There is no law which permits a person, by posting a notice on his premises, to preclude a duly authorized officer from entering the said premises in the performance of his duties. To permit a landowner to do so by such action would, in effect, nullify the authority of such officers and render their efforts at enforcement completely unavailing.

Agents of the Conservation Commission are required, by Section 5 of the Wildlife and Forestry Act, to obtain a search warrant prior to entering an occupied dwelling and outbuildings immediately adjacent thereto. However, there is no requirement that a search warrant be obtained prior to his entering an open

field. Numerous cases have upheld the right of police officers to search such premises without a warrant in the enforcement of liquor laws. (State v. Cobb, 309 Mo. 89, 273 S.W. 736; State v. Bailey, 280 S.W. 1044, Ann. 74 A.L.R. 1454.) There would appear to be no reason for applying a different rule to officers enforcing game laws.

CONCLUSION

Therefore, it is the opinion of this department that agents of the Conservation Commission, in the performance of their duties, may enter upon privately owned lands, and the fact that such lands have been posted with notices forbidding the entry of "Game Wardens" will not prevent their entering such lands in the performance of their duties.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General