

CONSERVATION COMMISSION:
MAGISTRATE COURTS:
LICENSES:
JURISDICTION:
COURTS:

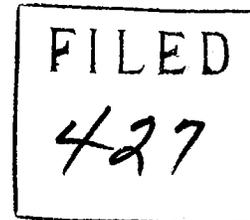
The courts of Missouri do not have jurisdiction to suspend or revoke permits issued by the Conservation Commission and further the Conservation Commission does not have the

power to confer such jurisdiction on the courts and any such rule purporting to confer such jurisdiction is invalid.

OPINION NO. 427

November 6, 1969

Mr. Samuel J. Short, Jr.
Prosecuting Attorney
Cedar County
Second Floor Court House
Stockton, Missouri 65785



Dear Mr. Short:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"I respectfully request an opinion from your office as to the legality of a magistrate judge revoking or suspending for a definite time the hunting and fishing permit and right to hunt within the State of Missouri of a defendant convicted or found guilty of violating the Wild Life Code of Missouri. I am particularly interested of your opinion as to whether Section 2.15B of the Wild Life Code of Missouri permits the suspension or revocation of the permit and the privilege of hunting within the State, as a part of punishment imposed by the sentence.

"I am further concerned as to your opinion if it will be necessary to bring a separate action to have the permit and privilege revoked or suspended wherein the defendant would have notice of the revocation or suspension and be given the opportunity to oppose this particular action.

"If it is your opinion that a magistrate judge

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is not granted the authority to suspend or revoke the permit and privilege as part of a sentence, I would appreciate your opinion as to whether the revocation and suspension of the same and the surrender of the hunting and fishing permit could be made a condition of parole on a suspended jail sentence.

"Your consideration in rendering an opinion on this matter will be greatly appreciated."

Article IV, Section 40(a), Missouri Constitution, provides for a conservation commission and reads in part as follows:

"The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state, including hatcheries, sanctuaries, refuges, reservations and all other property owned, acquired or used for such purposes and the acquisition and establishment thereof, and the administration of all laws pertaining thereto, shall be vested in a conservation commission consisting of four members appointed by the governor, not more than two of whom shall be of the same political party. * * * "

Article IV, Section 45, Missouri Constitution, provides for rules and regulations and reads as follows:

"The rules and regulations of the commission not relating to its organization and internal management shall become effective not less than ten days after being filed with the secretary of state as provided in section 16 of this article, and such final rules and regulations affecting private rights as are judicial or quasi-judicial in nature shall be subject to the judicial review provided in section 22 of article V."

The legislature enacted Section 252.040, RSMo 1959, to implement the constitutional provisions and the section reads as follows:

"No wild life shall be pursued, taken, killed, possessed or disposed of except in the manner, to the extent and at the time or times permitted by such rules and regulations; and any pursuit, taking, killing, possession or disposition thereof,

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except as permitted by such rules and regulations, are hereby prohibited. Any person violating this section shall be guilty of a misdemeanor."

Accordingly the Conservation Commission has promulgated rules and regulations known as the Wildlife Code of Missouri. The Wildlife Code essentially governs every aspect of hunting and fishing and the control of wildlife in Missouri. Enforcement of the Wildlife Code is by criminal prosecution for misdemeanors. Sections 252.040, 252.060, 252.090, 252.100, 252.150, 252.160, 252.170, 252.180, 252.190, 252.200, 252.210, 252.220 and 252.230, RSMo. Enforcement of the Wildlife Code by criminal prosecution was upheld in Marsh v. Bartlett, 121 S.W.2d 737 (Mo. 1938).

Rule II of the Wildlife Code contains general provisions for permits. Rule 2.15 provides for the issuance and the suspension or revocation of permits and reads in part as follows:

"A. Permits may be obtained only upon payment to the Commission or its authorized distributing agents at the time of application, the fees fixed by this Code.

"A permit for the taking of wildlife may be issued only to an individual, and may be used only by the individual to whom it is issued. No permit, or special hunting or fishing tag, may be loaned, pre-dated, or altered in any manner. Miscellaneous and commercial permits which do not provide for the taking of wildlife may be issued to a firm, organization or partnership.

"B. The acceptance of a permit shall constitute an acknowledgment by the permittee of his duty to comply with the provisions of this Code and any amendments thereto.

"The Commission reserves the right to deny any permit for cause, but not until applicant shall have been afforded reasonable opportunity to be heard by the Commission or its authorized representative. Any permit may be suspended or revoked for cause by a court of competent jurisdiction." (Emphasis supplied).

Thus, Rule 2.15 purports to confer jurisdiction in the courts to suspend or revoke permits. Your question seems to assume the courts thus have jurisdiction to suspend or revoke and your question is whether a suspension or revocation can be made a part of the criminal punishment imposed by sentence after criminal prosecution.

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We do not reach your question because it is our opinion the courts have no jurisdiction to suspend or revoke permits issued by the Conservation Commission and that the Conservation Commission has no power to confer such jurisdiction on the courts.

The source of and right to assume jurisdiction of courts is stated in 21 C.J.S.Courts, Section 28, as follows:

"Jurisdiction, in the general sense, as applied to the subject matter of a suit at law or in equity, must be found in, and derived from, the law which organizes the tribunal; and where there is an absence of power conferred by law a court will not act in the premises. The jurisdiction of courts, as appears in Sections 120-139, flows from constitutional and statutory provisions, and from the common law so far as not repugnant to the federal and state constitutions and laws; and courts can neither assume jurisdiction which is not conferred on them, nor decline, as appears in Section 90 infra, that which is conferred unless they are invested with discretion. * * * "

See Mosely v. Empire Gas & Fuel Co., 313 Mo.225,281 S.W.762,768, 45 A.L.R.1223; and State ex rel. Allen v. Trimble, 317 Mo.751,297 S.W.378,380.

The governmental power to establish courts and to define their jurisdictions is legislative in character, and is limited only by the constitution. State ex rel. Dunham v. Nixon, 232 Mo.98,133 S.W.336.

It is said in 21 C.J.S.Courts, Section 2, that there are courts of general jurisdiction which are those competent to decide their own jurisdiction and to take cognizance of all causes, civil and criminal, of a particular nature; and that there are courts of special jurisdiction which are those incompetent to decide their own jurisdiction and take cognizance only of a few specified matters. See State v. Daniels, 66 Mo.192 (1877). A court of general jurisdiction when engaged in the exercise of a limited statutory authority is confined to the authority given. American Asphalt Roof Corporation v. Marler, 56 S.W.2d 844 (Mo.App.).

Jurisdiction of courts of general jurisdiction will, in the absence of anything in the record to the contrary, be presumed, but this presumption does not prevail in respect to courts having special and limited jurisdiction. Gibson v. Vaughan, 61 Mo.418. There is no presumption of jurisdiction when a court, though of general jurisdiction, exercises special statutory powers or otherwise than according to the common law, since the court stands on the same footing with courts of limited or inferior jurisdiction. Crabtree v. Aetna Life Ins.Co., 341 Mo.1173,111 S.W.2d 103.

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Courts do possess inherent powers which are those necessary for the administration of justice, in order that courts may preserve their existence and function as a court, which powers exist and where merely because it is a court and irrespective of legislative and constitutional grant. State ex rel. Gentry et al., v. Becker, 351 Mo. 769, 174 S.W.2d 181; Clark v. Austin, 340 Mo. 467, 101 S.W.2d 977. The question of jurisdiction is not an inherent power and a court cannot extend its jurisdiction by judicial feat. Schenberg v. Schenberg, 307 S.W.2d 697 (Mo.App.). Nor can parties confer jurisdiction on courts. State ex rel Furstenfeld v. Nixon, 133 S.W.340 (Mo.).

The judicial power of the State of Missouri is vested as provided in Article V, Section 1, Missouri Constitution, as follows:

"The judicial power of the state shall be vested in a supreme court, courts of appeals, circuit courts, probate courts, the St. Louis courts of criminal correction, the existing courts of common pleas, magistrates courts, and municipal corporation courts."

The Supreme Court is the highest court in Missouri. Article V, Section 2, Missouri Constitution. The Supreme Court is an appellate court and has exclusive appellate jurisdiction of certain cases as provided in Article V, Section 3, Missouri Constitution.

The courts of appeals in Missouri have jurisdiction of appeals as provided by law from all inferior courts in their districts except appeals within the exclusive appellate jurisdiction of the Supreme Court. Article V, Section 13, Missouri Constitution.

The Supreme Court, courts of appeals and circuit courts have a general superintending control over all inferior courts in their jurisdictions. Article V, Section 4, Missouri Constitution. The Supreme Court may establish rules of practice and procedure for all courts. Article V, Section 5, Missouri Constitution.

Article V, Section 14, Missouri Constitution, establishes the jurisdiction of the circuit courts as follows:

"The circuit courts shall have jurisdiction over all criminal cases not otherwise provided for by law, exclusive original jurisdiction in all civil cases not otherwise provided for, and concurrent and appellate jurisdiction as provided by law. Such courts shall sit at times and places in each county as prescribed by law."

The general statute establishing jurisdiction of the circuit courts is Section 478.070, RSMo, and reads as follows:

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"The circuit courts in the respective counties in which they may be held shall have power and jurisdiction as follows:

"(1) As courts of law, in all criminal cases which shall not be otherwise provided for by law;

"(2) Exclusive original jurisdiction in all civil cases which shall not be cognizable before the probate courts and magistrate courts, and not otherwise provided for by law;

"(3) Concurrent original jurisdiction with magistrates in all counties and cities, in all civil actions for the recovery of money, whether such actions be founded upon contract or tort, or upon bond or undertaking given in pursuance of law, in any civil action or proceeding, or for any penalty or forfeiture given by any statute of this state, when the sum demanded, exclusive of interest and costs, shall exceed fifty dollars, and does not exceed the maximum jurisdiction of magistrates in like cases in any such county or city; and also in all such cases where the sum demanded, exclusive of interest and costs, is less than fifty dollars, and wherein there are two or more defendants, not all of whom reside in the same county. And all actions against any railroad company in this state, to recover damages for the killing and injuring of horses, mules, cattle or other animals, without regard for the value of such animals, or the amount of damages claimed for killing or injuring of same, except in all cases where the amount involved is less than fifty dollars. And in all actions and proceedings for the recovery of specific personal property, when the value of the property sought to be recovered, and the damages claimed for the taking or detention of same, and for injuries thereto, shall exceed the sum of fifty dollars, and does not exceed the maximum jurisdiction of magistrates in like cases in any such county or city.

"(4) Appellate jurisdiction from the judgment and orders of county courts, probate courts and magistrates, in all cases not expressly prohibited by law; and shall possess a superintending control over them, and a general control over executors, administrators, guardians, curators, minors, idiots, lunatics and persons of unsound mind."

The jurisdiction of circuit courts in criminal cases is declared

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in Section 541.020, RSMo, as follows:

"Except as otherwise provided by law, the circuit courts shall have exclusive original jurisdiction in all cases of felony, and concurrent original jurisdiction with and appellate jurisdiction from magistrates and police courts of towns and cities in all cases of misdemeanor."

There are also numerous statutes conferring jurisdiction, including appellate jurisdiction, in the circuit courts for specific types of cases. We will not list them all here but state that we have found no statute conferring jurisdiction on the circuit courts to suspend or revoke permits issued by the Conservation Commission.

Article V, Section 20, Missouri Constitution, states the jurisdiction of the magistrate courts as follows:

"Until otherwise provided by law consistent with this constitution, the practice, procedure, administration and jurisdiction of magistrate courts, and appeals therefrom, shall be as now provided by law for justices of the peace; and in counties of less than seventy thousand inhabitants magistrate courts shall have concurrent juvenile jurisdiction with the circuit court, and the powers of the circuit judge in chambers when the circuit judge is absent from the county."

Section 482.090, RSMo, implements Article V, Section 20, in civil actions as follows:

"1. Each magistrate shall have jurisdiction co-extensive with his county and the magistrates may organize into a court or courts with divisions.

"2. Except as otherwise provided by law, magistrates shall have original jurisdiction of all civil actions and proceedings for the recovery of money, whether such action be founded upon contract or tort, or upon a bond or undertaking given in pursuance of law in any civil action or proceeding, or for a penalty or forfeiture given by any statute of this state when the sum demanded, exclusive of interest and costs, does not exceed one thousand dollars in counties which now have or may hereafter have not more than seventy thousand inhabitants, one thousand five hundred dollars in counties which now have or may hereafter have more than seventy thousand and less than one hundred thousand inhabitants, two thousand dollars in counties which now have or may hereafter have one hundred thousand or more inhabitants, and in counties which have within their boundaries a city or a part of a city of more than four hundred

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thousand inhabitants.

"3. Magistrates shall have jurisdiction of all actions against any railroad company in this state, to recover damages for killing or injuring horses, mules, cattle or other animals within their respective counties, without regard to the value of such animals, or the amount claimed for killing or injuring the same; provided, such magistrates shall have exclusive original jurisdiction in all such cases where the amount involved is less than fifty dollars."

Section 543.010, RSMo, implements Article V, Section 20, in criminal actions as follows:

"Magistrates shall have concurrent original jurisdiction with the circuit court, coextensive with their respective counties in all cases of misdemeanor, except in cities having courts exercising exclusive jurisdiction in criminal cases, or as otherwise provided by law."

Thus, none of the provisions cited which relate to the jurisdiction of the appellate courts and circuit and magistrate courts confer jurisdiction in those courts to suspend or revoke permits issued by the Conservation Commission. Nor are we aware of any provision of the constitution or the statutes which confers such jurisdiction in those courts or any other courts in Missouri. In particular neither Article IV, Sections 40(a) through 46, Missouri Constitution, nor Chapter 252, RSMo, both providing for and relating to the Conservation Commission, confer such jurisdiction.

Thus, the courts of Missouri have not been given jurisdiction to suspend or revoke these permits by either the constitution or the legislature, and we find no common law jurisdiction.

Article V, Section 22, Missouri Constitution, does provide for judicial review of the action of administrative agencies, and reads as follows:

"All final decisions, findings, rules and orders of any administrative officer or body existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination whether the same are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record."

This provision has been implemented by Chapter 536, RSMo, the

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Administration Procedure Act.

Such provisions would apply if the Conservation Commission would suspend or revoke a permit and then appeal would be taken to the courts. However, such provisions plainly do not confer jurisdiction on the courts to suspend or revoke.

As to the purported attempt by the Conservation Commission to confer jurisdiction in the courts by administrative rule, it is our opinion that the Commission clearly does not have any such power to do so and the provision in Rule 2.15B is invalid.

Neither the provisions in Article IV, Section 40(a) through Section 46, Missouri Constitution, nor Chapter 252, RSMo, give the Conservation Commission such power.

Furthermore, as stated above, the jurisdiction of the courts is derived from the constitution and the legislature. *Dunham v. Nixon, supra; Mosely v. Empire Gas & Fuel Co., supra; State ex rel. Allen v. Trimble, supra; and 21 C.J.S. Courts, Section 28.* Thus, jurisdiction could not be derived from an administrative agency such as the Conservation Commission which is part of the executive branch of government. Article IV, Section 12, Missouri Constitution.

CONCLUSION

It is the opinion of this office that the courts of Missouri do not have jurisdiction to suspend or revoke permits issued by the Conservation Commission and further that the Conservation Commission does not have the power to confer such jurisdiction on the courts and any such rule purporting to confer such jurisdiction is invalid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Very truly yours,



JOHN C. DANFORTH
Attorney General