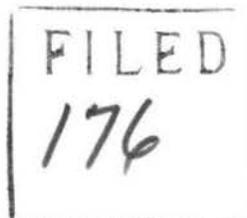


April 16, 1971

OPINION LETTER NO. 176
Answer by Letter-Klaffenbach

Honorable Richard Southern
201 West Summer
Monroe City, Missouri 63456



Dear Mr. Southern:

This is in response to your request for an opinion from this office as follows:

"Can the legislature enact as part of a Scenic Rivers Law Section 16-(restricting the cutting of timber within fifty feet of a stream or river) and Section 19 (restricting developing and commercialization within eighty-five yards of the banks of rivers and streams?

"Can the Conservation Commission under Article IV, sections 40a-46 of the Missouri Constitution act as administrator of a Scenic Rivers system as proposed by the committee recommended bill?"

In response to your first question, we are enclosing herewith Opinion No. 238 issued by this office on April 7, 1970, to Honorable Ted Salveter. This opinion discusses the general principles of law involved in an act similar to the one you inquire about, and we believe the answer to your first question will be found by applying the principles of law discussed in this opinion to the provisions of your bill.

Your second question asks whether the Conservation Commission can be authorized by the state legislature to act as administrator of a scenic rivers system as proposed by a bill which you enclose.

Honorable Richard Southern

Section 40 (a) of Article IV of the Missouri Constitution states that the Conservation Commission shall have 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, ...".

It appears from the debates of the Constitutional Convention of 1945 that there was extensive discussion with respect to the use of the word "forestry" in this section. An amendment to delete the word was defeated and in doing so the delegates recognized that the Conservation Commission was, under the old constitutional amendment, exercising broad forestry powers and that such powers were not limited merely to the protection of forestry for the preservation of game.

It appears also that the almost concurrent enactment of the forestry laws which are contained in Chapter 254, RSMo 1969, and which vest forestry powers in the Conservation Commission gives us a further indication that the legislature was of the view that the Commission was given broad powers by the Constitution with respect to forestry.

We have noted from the citation and quotation of Section 40 (a) of Article IV that the Commission has the "administration of all laws pertaining" to such subjects as are therein provided including forestry. While there is no Missouri case authority to aid us in answering your precise question it is our view that the powers given to the Conservation Commission in the bill to which you refer and which we have made a part of our file, are in aid of and in support of the powers given the Conservation Commission under the Missouri Constitution.

Having reached this conclusion we do not believe it is necessary to pass on the question of whether a statute would be valid if such statute conferred duties on the Conservation Commission completely divorced from the powers, authority and duties given to the Commission by the Constitution.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 238 - April 7, 1970 - Salveter