

Trespass - Hunting and fishing on  
Lake of Ozarks.

Vol. 22 Dec 8 1933 MS 7110 1933

September 16, 1933



Mr. F. M. Brady,  
Prosecuting Attorney of Benton Co.,  
Warsaw, Missouri

Dear Sir:

We acknowledge your letter as follows:

"I would like to have your opinion on the following proposition."

Is it a violation of the law for a person to hunt or fish on lands along the Lake of the Ozarks on lands that are flooded part of the time by waters from the lake, but when lake is at lower stage is out of the water? This would be unenclosed lands along the lake shore where folks might fish in the lake or hunt ducks, but before the Dam was built was not covered by water from the river, and if so what section should a prosecution for such trespass be under.

Also would it be a violation of the law for a hunter or fisherman to go from main stream of Osage River as it was originally before Dam was built and lake formed out over lands that are now covered with lake water, or could the person owning the land under the water have such hunter or fisherman prosecuted for trespass, and if so under what section would the prosecution lie?

I may not have made myself clear as to the information I want, but I want to know how far the owner of lands along the Lake of the Ozarks can go to keep people from hunting and fishing along the shores of the lake and upon the overflowed lands as it is a question which is constantly up and I am not certain

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if it is a violation of any law, unless it be under section 8312 R. S. 1929, which does not seem to cover these lands that are overflowed a part of the time and not cultivated or improved.

Your opinion will be greatly appreciated."

The section that you cite in your letter, namely, section 8312 R. S. 1929, which reads as follows,

"Every person who shall be found hunting with a gun or dog upon the enclosed improved or cultivated lands of another, or shall enter the same to catch or kill game of any kind without the consent of the owner or person in charge of such lands shall, on complaint of such owner or person in charge of such lands and upon conviction thereof, be fined not exceeding ten dollars."

in our opinion is the only statute relating to criminal trespassing which is available. Our statutes are full of sections relating to civil trespass but we find none other than section 8312, Supra, that would in anywise justify a prosecution under the facts contained in your letter.

I assume the electrical company which constructed the Bagnet Dam owns all of the real estate on either side of the shore line--if so, it would be private property. It may be the grant or authority for constructing the dam was given with reservations. I have not taken that into consideration, therefore treating the ownership simply as any other privately owned real estate, the section above would apply.

Yours very truly,



Assistant Attorney General.

APPROVED