

LATE PURCHASING AGENT:
CONSERVATION COMMISSION:

The State Purchasing Agent should purchase the supplies for the State Conservation Commission, except he has no authority to lease or purchase land for it.

October 18, 1937. ¹⁰⁻²⁵



Honorable George Blowers,
State Purchasing Agent,
Jefferson City, Missouri.

Dear Sir:

This acknowledges your inquiry which is as follows:

"Will you please give this office an opinion as to whether or not the Conservation Commission comes under the State Purchasing Act of 1933."

Replying thereto, Constitutional Amendment No. 4 was adopted, effective July 1, 1937 (Laws of Missouri, 1937, page 614), the last provision of which is that the amendment shall be self-enforcing. The Act provides:

"The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wild life resources of the State, including hatcheries, sanctuaries, refuges, reservations and all other property now owned or used for said purposes or hereafter acquired for said purposes and the acquisition and establishment of the same, and the administration of the laws now or hereafter pertaining thereto, shall be vested in" the Conservation Commission.

Powers conferred are the following:

"Said Commission shall have the power to acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient for the use of the Commission,"

including the right of condemnation, with the specification that the latter shall be exercised in the same manner as this power is exercised by the State Highway Commission.

With reference to the moneys arising on account of the amendment is this provision:

"The fees, monies, or funds arising from the operation and transactions of said Commission and from the application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wild life resources of the State and from the sale of property used for said purposes, shall be expended and used by said Commission for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wild life resources of the State, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto and for no other purpose."

It further states:

"The general assembly may enact any laws in aid of but not inconsistent with the provisions of this amendment,"

and in terms repeals all inconsistent laws.

It would seem that the line of demarcation is to determine what laws would be inconsistent with the provisions of the constitutional amendment as written.

It is a well recognized rule of statutory construction that repeals by implication are not favored, but operate only where there is an irreconcilable inconsistency, and that effect shall be given to all laws or constitutional provisions where it is possible to do so.

Section 43 of Article IV of the Missouri Constitution provides, among other things, the following:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the general assembly shall have no power to divert the same or to permit money to be drawn from the treasury except in pursuance of regular appropriations by law."

Under the provisions of the latter section of the Constitution, if the money arising by reason of the provisions of the Conservation Commission Act belong to the State, then it must be paid into the state treasury. No provision of the amendment creating the Conservation Commission is to the contrary. Effect can be given to both provisions. So doing, it would appear that the reasonable construction to be given the Conservation Commission Act is that the control, management, etc., of the wild life resources of the State as set forth therein is vested in said Commission, and the Legislature cannot divest the Conservation Commission of the same, but the Legislature may enact any and all laws as its wisdom dictates, except such as would by fair construction be inconsistent with a specific provision of the Act creating said Commission, and except that the administration of the laws regulating the wild life resources shall not be taken away from said Commission. The Act seems to contemplate this by providing that "the administration of the laws now or hereafter pertaining thereto" shall be vested in the Commission. Likewise, as to the powers conferred on the Commission by the second paragraph of the amendment that it "shall have the power to acquire * * * all property necessary, useful or convenient for the use of the Commission." This does not discard all other law with reference thereto, whether it be by legislative act or giving meaning to other provisions of the Constitution. In fact, this same section by providing that in eminent domain proceedings the Commission shall be governed by the laws "as now or hereafter provided for the exercise of eminent domain by the State Highway Commission," plainly indicates that the Legislature shall function in the field of prescribing the course to be pursued by said Commission, but is prohibited from taking away from the Commission the right of eminent domain as that right exists with respect to the Highway Commission.

The further provision in the third paragraph on page 615, Laws of Missouri, 1937, respecting the money arising "from the application and the administration of the laws and regulations pertaining to * * * wild life resources" of the "State

shall be expended and used" by the Commission for the "control, management, restoration, conservation and regulation" of the wild life resources of the State, is consistent with the view that while the Legislature is not authorized to take away, by enacting a statute, the administration of the laws as passed or that may be passed by the Legislature, yet the field is open to the Legislature to pass laws regulating in the hands of the Commission the expenditure of the said money, having always in mind that the money shall actually be expended by the Conservation Commission, but that it shall be expended only after it has been collected, placed in the state treasury as provided by Section 43 of Article IV, supra, and appropriated by the Legislature, the important safeguard being guaranteed to the Commission that the Legislature is prohibited from diverting these funds to some other purpose or field than that of the wild life resources of the State.

In this way there is the check and balance placed on the one department by the other. It would appear that the application of this rule of not turning over to any one department "body, boots and breeches" is not only sound policy, but is further emphasized and clearly shown by the Act creating the Commission where it is therein expressly stated that the General Assembly "may enact any laws in aid of but not inconsistent with the provisions of this amendment."

To hold otherwise would mean that the Conservation Commission should be a law unto itself, under no check, answerable to no other department of government, and would have all power, and, like the King, could do no wrong, so whatever they did or might do would be right because they did it, and would cast into the discard Section 43 of Article IV of the Constitution, and would violate the rule of statutory construction that said Section 43, supra, should not be repealed by implication, and would violate sound public policy.

The fair meaning to be placed on said amendment is that it guarantees that the administration of the wild life resources of the State shall not by legislative act be taken away from said Conservation Commission, but that the Legislature may enact laws regulating the manner in which the Commission may acquire property, and may by legislative act determine the amount of license that may be required by the Conservation Commission or may be collected by them, and that the moneys so collected by said Conservation Commission belong to the State, the Conservation Commission merely being a State agency, and

that said money so collected should be paid into the state treasury as provided by Section 43, supra, of the State Constitution.

By the constitutional amendment creating the Conservation Commission the Legislature is divested of any power to determine the number of conservation commissioners, to determine what their political faith shall be, to fill vacancies in a different way than as provided by said amendment, or to determine the salary or tenure of office of the commissioners. Likewise, the Legislature shall have no power to take away from the Conservation Commission the appointment of a Director of Conservation, nor the right to determine the number of assistants or other employees of the Commission, nor shall the Legislature have power to determine the qualifications of the Director or his assistants or employees, nor fix their individual salaries.

By the State Purchasing Agent Act, Laws of Missouri, 1933, Section 2, page 411, the Legislature prescribes the following:

"The purchasing agent shall purchase all supplies except printing, binding and paper, as provided for in Chap. 115, R. S. 1929, for all departments of the State, except as in this Act otherwise provided. He shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the Constitution of the State."

It would seem that the Act creating the Purchasing Agent has not authorized him to negotiate leases or purchase real estate for a department that derives its power to acquire lands from the Constitution of the State. If Amendment No. 4, supra, creating the Conservation Commission, authorizes the Conservation Commission to purchase real estate, which it probably does do, then insofar as the activities of the Conservation Commission apply to leasing and purchasing real estate, the State Purchasing Agent would have no authority.

The Conservation Commission Act not having definitely prescribed an exclusive method of purchasing to be followed by the Conservation Commission, the Legislature has the authority to pass laws prescribing the method by which purchases may be

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made by the Conservation Commission, and the Legislature having prescribed that method by the above Section 2 of the State Purchasing Agent Act, the same should be followed.

CONCLUSION

It is our opinion that the State Conservation Commission comes under the provisions of the State Purchasing Agent Act of 1933, except as to the transactions of the Conservation Commission having to do or dealing with leasing or purchasing real estate.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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