

STATE PARKS: Control and management of state parks,
where vested.

July 9, 1937

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Honorable W. C. Buford
Secretary
Conservation Commission
Jefferson City, Missouri

Dear Mr. Buford:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office which reads as follows:

"It is my desire to have your opinion as to what state parks, or parts of state parks, come under the new Conservation Commission. Also those that come under the State Park Board. I am enclosing a list of our state parks.

"I am not asking for this opinion for the Commission, but for my own personal knowledge."

At the general election held in November, 1936, the people of this state adopted a constitutional amendment designated number 4, which vested the control, management, restoration, conservation and regulation of the birds, fish, game, forestry and all wild life resources of the state in a Conservation Commission consisting of four members, to be appointed by the Governor. This amendment went into effect July 1, 1937. Said Constitutional Amendment provides, in part:

"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 a commission to be known as the Conservation Commission, to consist of four members to be appointed by the Governor, not more than two of whom shall be members of the same political party."

From a reading of said amendment it is plain that the control and management of all hatcheries, sanctuaries, refuges, reservations and all other property now owned or used for said purposes or hereafter acquired for said purposes, whether in state parks or not, are now vested in the Conservation Commission. No provision is found in said amendment, however, giving the Conservation Commission the control or management of the recreational parks of this state or the recreational areas contained in parks used in part for conservation purposes.

The Fifty-ninth General Assembly, recognizing that there was no provision providing for the control, regulation and management of the state parks since the adoption of Constitutional Amendment No. 4, passed House Bill No. 184 which creates a State Park Board and vests the control and management of state parks in said board. The fact that the Legislature recognized that Constitutional Amendment No. 4 did not give the Conservation Commission authority over the recreational parks of this state is clearly evidenced by the emergency clause of House Bill No. 184, which reads:

"Sec. 4. Because of the fact that since the adoption of Amendment No. 4 to the Constitution of the

State of Missouri at the general election held November 3, 1936, there is no law in this State which adequately provides for the ownership, control and regulation of several of the state parks in the State of Missouri an emergency is declared to exist within the meaning of the Constitution and this Act shall be in full force and effect from and after its passage and approval."

While House Bill No. 184 vests the control and regulation of the state parks in the State Park Board it cannot be said that said Act gives the park board control and management of hatcheries, sanctuaries, refuges, reservations, and of the birds, fish, game and wild life resources contained in said parks, for the reason that to so construe said act would render it unconstitutional as being in conflict with Constitutional Amendment No. 4, which gives the Conservation Commission the control and regulation of these things. Bearing in mind that an act should never be construed as unconstitutional if a reasonable construction of same can be given which will render it constitutional, it is our opinion that House Bill No. 184 does not attempt to give the State Park Board any jurisdiction over hatcheries, sanctuaries, refuges, reservations and wild life contained in said parks.

From the above, we think it plain that the control and management of all wild life resources, including hatcheries, sanctuaries, refuges, reservations and all other property used for said purposes, whether located in a state park or not, are vested in the Conservation Commission. It necessarily follows that all state parks used exclusively for the restoration, conservation and regulation of the bird, fish, game and wild life resources of the state are now under the exclusive jurisdiction of the Conservation Commission. We think it equally clear that all state parks used solely for

recreational purposes are now under the exclusive control and management of the State Park Board.

The question then arises as to the control and management of state parks that are used both as recreational areas and which also have fish hatcheries, bird sanctuaries, game refuges and other wild life resources. In these parks, as pointed out above, the control and management of the wild life resources, including hatcheries, sanctuaries, refuges, etc., contained in said parks, are clearly under the control and management of the Conservation Commission. Nothing is found, however, in Amendment No. 4, giving said Commission the control or management of the recreational areas of these parks, that is, the cabins, picnic grounds, swimming pools and beaches, concessions, etc.

As stated above, House Bill No. 184 gives the control and management of state parks to the State Park Board with the exception, in view of Constitutional Amendment No. 4, that the fish, game, birds and other wild life resources, including hatcheries, sanctuaries, refuges and reservations contained in said parks are under the control and management of the Conservation Commission.

It is, therefore, our opinion that the recreational areas contained in said parks are under the control and management of the State Park Board and that this construction does not, in any way, conflict with Constitutional Amendment No. 4 vesting the control and management of the wild life resources, contained in said parks, in the Conservation Commission.

CONCLUSION

In view of the above, we conclude as follows:

1. That the control and management of state parks used exclusively for conserving and restoring the wild life resources of this state are vested in the Conservation Commission.

Honorable W. C. Buford

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2. That the control and management of state parks used solely for recreational purposes are vested in the State Park Board.

3. That in state parks containing both wild life resources and recreational areas the wild life resources contained in said parks, including game, fish, birds, hatcheries, sanctuaries, refuges and reservations, are under the control and management of the Conservation Commission, and the recreational areas contained in said parks, including cabins, picnic grounds, swimming pools and beaches, concessions, etc., are under the control and management of the State Park Board.

Respectfully submitted,

J. E. TAYLOR
(Acting) Attorney General

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