

FISH AND GAME: It is possible to charge a crime under Section 8265, Revised Statutes Missouri, 1929.

5-18
May 13, 1937



Honorable Paul N. Chitwood
Prosecuting Attorney
Reynolds County
Centerville, Missouri

Dear Sir:

This Department is in receipt of your request for an opinion which reads as follows:

"I have been receiving a number of complaints against a party in Reynolds County, Missouri, for an alleged violation of the Fish and Game Laws, particularly Section 8625, R. S. 1929, relating to the Contamination of Streams, and which has been declared invalid in the case of State v. Light, etc. Co. 212 Mo., 101, which reads in part as follows:

" 'Section 28 of the Game and Fish Law of 1905, Laws 1905, p. 163, providing that it shall be unlawful for any person or persons, firm or corporation to suffer or permit any dyestuff, coal tar, oil, sawdust, poison or deleterious substances to be thrown, run or drained into any waters of this State in quantities sufficient to injure, stupefy or kill fish which may inhabit the same at or below the point where any such substances are discharged or

permitted to flow or thrown in such waters, is void, for the reason that it does not intelligently describe or define an offense. It only punishes the person or company that permits those things to be done, and not the person that does them. Nor does it require the persons doing the wrongful act to be in the employ or under the control of the person or firm permitting the act to be done. Besides the court cannot supply the essential and necessary provisions which would impress as wrongful and criminal the acts designated in the statute, such as its failure to impose on those committing the acts the duty to prevent the throwing of poisonous substances into the waters of the State, or to declare that they occupy any position that would impose upon them either the moral or legal obligation of not permitting the commission of such acts.'

"Being unable to find any later cases, or any further legislation supplying the necessary and essential parts of this law, I was just wondering what your opinion is as to whether or not a demurrer would be sustained as to the information in the particular case referred to, which I am planning on filing in the near future.

"Will you please give me your opinion in this matter at your

earliest convenience, if possible
as long a time before May 24th,
(when our Circuit Court meets)
as can be arranged?"

Section 8265 was amended in 1915 so that it
contains its present form. Originally, the statute
read as follows:

"It shall be unlawful for any
person or persons, firm or corpora-
tion to suffer or permit any dye-
stuff, coal tar, oil, sawdust,
poison or deleterious substances
to be thrown, run or drained into
any of the waters of this State in
quantities sufficient to injure,
stupefy or kill fish which may in-
habit the same at or below the
point where any such substances are
discharged or permitted to flow or
thrown in such waters. Any person
or persons, firm or corporation
offending against any of the pro-
visions of this section shall be
deemed guilty of a misdemeanor,
and upon conviction shall be fined
not less than \$200 nor more than
\$500 for each offense."

Section 8265, concerning which you have requested
a construction, is as follows:

"It shall be unlawful for any
person or persons, firm or cor-
poration to cause any dyestuff,
coal tar, oil, sawdust, poison
or deleterious substances to be
thrown, run or drained into any
of the waters of this state in
quantities sufficient to injure,
stupefy, or kill fish which may
inhabit the same at or below
the point where any such sub-

stances are discharged or caused to flow or be thrown into such water: Provided, that it shall not be a violation of this section for any person, firm or corporation engaged in any mining industry to cause any water handled or used in any branch of such industry to be discharged on the surface of the land where such industry or branch thereof is being carried on under such precautionary measures as shall be approved by the state game and fish commissioner. Any person or persons, firm or corporation offending against any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction, shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for each offense."

The changes which the Legislature enacted in 1915 were to the effect that, whereas, the original section contained the words "to suffer or permit," whereas, Section 8265 uses the words "to cause," and the original section contained the words "where any such substances are discharged or permitted to flow or thrown in such waters," whereas, the present section contains the words "or caused to flow or be thrown in such waters," and, in addition thereto, has the above proviso which is in the nature of an exception.

As stated in your letter the court has interpreted the original section as being void for the reason that it did not intelligently describe or define an offense. The logic and reason for the same is contained in the case of State v. Light, 212 Mo. 1. c. 106;

"It will be observed that the provisions of that section undertake to create and define an offense by simply saying that any person or persons, firm or corporation who shall suffer or permit any poisonous or deleterious substances to be thrown, run or drained into the waters of this State in quantities sufficient to injure, stupefy or kill fish, shall be deemed guilty of a misdemeanor. No one can read the provisions of that section and escape the conclusion that it is a marked departure from the usual legislation along that line which undertakes to define criminal offenses. It will be observed that the provisions of this section do not condemn the act of throwing poison or deleterious substances into the waters of this State, but is simply directed against those who suffer or permit such act to be done. In other words, A may throw the poison or deleterious substances into the waters of this State, but his act is not embraced within the provisions of this section. On the other hand, if B. suffers or permits A to do this act, he is guilty of a criminal offense. As it is very tersely stated by the learned Attorney-General in his brief now before us, 'a person who actually and flagrantly does place poison or deleterious substances in the waters of this State escapes punishment, and the one who suffers or permits it to be done is punished.' Another marked feature of this statute is the omission of necessary provisions which are absolutely essential in order to

stamp the acts of persons permitting or suffering substances to be thrown into the waters of this State as a wrongful or criminal act. It nowhere provides that the permission or suffering of the acts to be done must be upon premises or in the operation of a plant under the control of the persons, firm or corporation designated by the statute, or that the persons committing the act are in the employ of such persons, firm or corporation. In other words, there is an entire absence from that section of provisions which in any way impose the duty upon the persons, firm or corporation designated by the statute to prevent the throwing of poisonous substances into the waters of this State or that such persons, firm or corporation as mentioned in the statute occupied any position which would impose upon either the moral or legal obligation of not suffering the commission of such acts. Manifestly the provisions of this section were intended to be directed towards persons, firms or corporations operating sawmills or other plants along streams of water in this State where poisonous refuse matter from such plants might be thrown, run or drained into such streams of water, but the difficulty in holding that this statute intelligently defines a criminal offense is that the court cannot supply the essential and necessary provisions which would impress the acts committed by those designated in the statute as wrongful or criminal."

Evidently, by the present statute, namely, Section 8265, it was the intention of the legislature to correct the defect in the original section, and hence, the words

"permitted or suffer" were changed, and in lieu thereof the word "cause" was inserted.

The court, in the Light decision, pointed, indirectly, the way for curing the defects in the original statute. We are, therefore, concerned with the meaning of the words "to cause." An interpretation of the effect of these words is contained in the case of Huffman v. United States, 259 Fed. 1. c. 38:

"For the purpose of a construction of this statute, it would seem that Webster's definition, 'to cause a thing is to effect it as an agent; to bring it about' - is sufficient, and therefore, in the determination of the sufficiency of the evidence to sustain the verdict, the question becomes one of whether or not under all the testimony, with the reasonable inferences that the jury might logically and reasonably draw therefrom, there was sufficient to sustain this allegation of the indictment that the defendant 'caused' the transportation of this girl in interstate commerce from the point named to Denver, Colo., for the purpose therein set forth."

In the decision of Stance v. San Luis Valley Land and Milling Company, 166 Fed. 220, the Court, in referring to the word "cause", states:

"An allegation in the complaint that defendant caused the affidavits charging the offense to be filed and plaintiff to be arrested and prosecuted is a sufficient charge that defendant initiated the prosecution."

In the decision of Webb v. Strobach, 143 Mo. App. 459, the court defines the word "cause" in the following

manner:

"The word 'cause', in Rev. St. 1899, sec.5989, providing that, when a city of the fourth class desires to pave its streets, the board of aldermen shall by resolution declare such improvement to be necessary and 'cause' the resolution to be published in some newspaper, etc., is used in its common meaning, 'to effect,' 'to produce,' 'to bring about,' and the mode in which publication is to be effected, produced, or brought about is not specifically designated."

In the decision of State ex rel. Watts v. Cain, 58 S. E. 937, is further enlightenment on the word "cause," and its meaning is as follows:

"To 'cause' means to act as a cause or agent in producing; to effect, bring about, be the occasion of, make, force, or compel; to effect as an agent; to produce or bring into existence. The power given to the county dispensary board, before permitting any dispensary to offer liquor for sale, to cause it to be put into packages of specified quantities involves the power of bottling it through such agencies as they deem best and authorized it to establish a bottling plant of its own for that purpose."

CONCLUSION

As stated in your letter, and we find the same to be true, there are no later decisions relating to

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Section 8265 since the amendment of the original section, yet, we are of the opinion that by the changes made in the statute the defects, as set forth in the Light decision, are cured; that by changing the words "permit or suffer" to "cause" and the legal effect of the words "to cause" will supply the essential necessary provisions which impress as wrongful and criminal the acts designated in the statute.

We are not in possession of the facts in your case, which might have been of valuable assistance to us in determining the question. We are of the opinion that you should be in a position to draw an information under Section 8265 and that a demurrer should not be sustained on the grounds that it was impossible to charge a crime under Section 8265.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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