

AMENDMENT NO. 4 FISH AND GAME: The Legislature may pass such laws as it may deem proper in aid of but not inconsistent with the provisions of Amendment No. 4.

January 21, 1937



Honorable Hiland D. Kelley,  
Member House of Representatives  
Jefferson City, Missouri

Dear Sir:

This department acknowledges receipt of your letter of January 20 in connection with Constitutional Amendment No. 4, relative to the creation of Conservation Commission. Your letter contains many important suggestions that you have in mind relative to the Wild Life Conservation, however, your specific question is as follows:

"May I have an opinion as to whether or not we may be permitted to enact enabling Legislation in connection with the Wild Life Conservation Program. The following letter contains a few points which I should like to incorporate in such legislation."

Constitutional Amendment No. 4 contains the plan in detail of the control, management, restoration, conservation and regulation of the fish and game of the State of Missouri. The last paragraph of the amendment is as follows:

"The General assembly may enact any laws in aid of but not inconsistent with the provisions of this amendment and all existing laws inconsistent herewith shall no longer remain in force or effect. This amendment shall be self enforcing and shall go into effect July 1, 1937."

Therefore, it would appear by the amendment itself that the amendment is self enforcing, but the General Assembly can enact any law or sections in aid of the same which the

legislature deems desirable. In the decision of Tremayne vs. the City of St. Louis 6 S. W. (2) 935. The Court said:

"Self executing constitutional provisions may be supplemented by statutes and city charters."

The provision of the amendment itself could be carried out and would be effective on July 1, 1937, even if the legislature refused or desired to pass no laws in aid of the amendment, as was said in the case of McGrew vs. Missouri Pacific Railway Company 230 Mo. 496.

"Where a State Constitution establishes a rule creating a new right so that had the right, as created by the Constitution, existed at common law, it could have been enforced by some common-law action, the Constitutional Provision is self-enforcing to the extent of authorizing its enforcement by an appropriate action at law, and it is immaterial that the Legislature might be able to supply other and better methods for protecting or enforcing such right; or even that the Legislature should be directed by the Constitution itself to pass suitable laws for enforcing the rule established by it."

The amendment is self enforcing because it provides for the same; otherwise, it would not have been, as was said in the case of Ivie vs. Bailey 5 S. W. (2d) 50.

"The Constitution itself is not self enforcing unless provision be made for that purpose."

As stated above, Amendment No. 4 declares itself to be self enforcing. The effect of the Legislature failing to pass laws in connection therewith is discussed in the case of St. Joseph vs. Pattern 62 Mo. 444.

"Const. 1875 art. 10, sec. 11, limiting taxation for school purposes to a specified rate, but providing that in certain districts the Legislature may provide for an increase to a stated

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limit by vote of the people, was self-executing as respects the firstmentioned limitation, and was not dependent on the act of the Legislature in providing for such increase, and therefore such constitutional provision repealed all pre-existing laws in respect to the rate of taxation for school purposes."

CONCLUSION

We are of the opinion that the Legislature may pass such laws as it may deem proper in aid of but not inconsistent with the provisions of Amendment No. 4.

Respectfully submitted,

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APPROVED:

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