

AMENDMENT NO. 4: House Bill No. 218:

Rabbits are not protected at the present time, but if House Bill No. 218 is enacted by the Legislature the Conservation Commission, as set up in Amendment No. 4 will have the control and regulation of rabbits to the extent that said Bill confers authority on the Commission.

March 22, 1937

Honorable W. Randall Smart
House of Representatives
Jefferson City, Missouri



Dear Sir:

This Department acknowledges receipt of your letter relative to the following question:

"House Bill No. 218 now under consideration by the Fish & Game Committee of the House directs the new Conservation Commissioner to issue licenses permitting the exportation for commercial purposes of rabbits.

"For the guidance of the Committee, will you please advise me:

"If House Bill 218

1. is enacted, and
2. is not enacted,

will the Conservation Commission, in view of the constitutional amendment voted on as proposition '4', and in view of Sec. 8224 R.S. Mo. 1929, be vested with the authority to regulate or prohibit the exportation of rabbits for commercial purposes?

"This Committee is in arrears with its work and matters will be materially expedited if your office will render its opinion on this question at its earliest convenience."

March 22, 1937

On February 5, 1937, this Department rendered an opinion to Honorable E. Sydney Stephens, Columbia, Missouri, holding, in effect, that the Conservation Commission created by Amendment No. 4 accepted the laws now in existence and as hereinafter passed by the General Assembly and could enforce the same; that all the statutes now in existence remain potent except in so far as they might conflict with Amendment No. 4. In view of the opinion heretofore rendered your question relating to the power and authority of the Commission with reference to House Bill No. 218, if it is enacted, or if it is not enacted, must be considered from the standpoint of the statutes as they now exist.

Article II, Chapter 43, Sections 8224 to 8315, inclusive, refers to the preservation of fish and game; Chapter 43 of Article I, Sections 8204 to 8223, inclusive, refers to the powers of the Fish and Game Commissioner. Section 8224 places the title to birds, fish and game in the State, and is as follows:

"The ownership of and title to all birds, fish and game, whether resident, migratory or imported, in the state of Missouri, not now held by private ownership, legally acquired, is hereby declared to be in the state, and no fish, birds or game shall be caught, taken or killed in any manner or at any time, or had in possession, except the person so catching, taking, killing or having in possession shall consent that the title of said birds, fish and game shall be and remain in the state of Missouri, for the purpose of regulating and controlling the use and disposition of the same after such catching, taking or killing. The catching, taking, killing or having in possession of birds, fish or game at any time, or in any manner, by any person, shall be deemed a consent of said person that the title of the state shall be and remain in the state,

for the purpose of regulating the use and disposition of the same, and said possession shall be consent to such title in the state."

In the case of State v. Heger 194 Mo. l. c. 711, the decision is in conformity with the statute heretofore quoted:

"The authorities are uniform in holding that the absolute ownership of wild game is vested in the people of the State, and that such is not the subject of private ownership. As no person has in such game any property rights to be affected, it follows that the Legislature, as the representative of the people of the State, and clothed by them with authority to make laws, may grant to individuals the right to hunt and kill game at such times, and upon such terms, and under such restrictions as it may see proper, or prohibit it altogether, as the Legislature may deem best. (Haggerty v. Ice Mfg. & Storage Co., 143 Mo. 238; Geer v. State of Connecticut, 161 U. S. 519; American Express Co. v. People, 133 Ill. 649; Ex parte Maier, 103 Cal. 476; State v. Rodman, 58 Minn. 393; Wagner v. People, 97 Ill. 320; Phelps v. Racey, 60 N. Y. 10.) "

With respect to 'game' and the meaning of 'ferae naturae,' the Supreme Court of Missouri, in the case of State v. Weber 205 Mo. l. c. 45, said:

"As we have said, the deer in question come within the meaning of the term 'game,' which means animals *ferae naturae*, or wild by nature. It makes no difference that said deer were raised in captivity and had

become tame, they are naturally wild. 'There is no property in wild animals until they have been subject to the control of man. If one secures and tames them they are his property; if he does not tame them, they are still his so long as they are kept confined and under his control'. (Cooley on Torts, (2 Ed.) 435; Manning v. Mitcherson, 69 Gas. 447; Amory v. Flynn, 10 Johns. 102; Com. v. Chace, 9 Pick. 15.) That deer are animals *ferae naturae* is held by all the authorities, and disputed by none."

We know, as a matter of fact, that rabbits are considered as game, or an animal *ferae naturae*, and the Legislature could consider rabbits as 'game' and by law protect the same, and, as said in the Heger decision,

"grant to individuals the right to hunt and kill game at such times, and upon such terms, and under such restrictions as it may see proper, or prohibit it altogether."

but heretofore, from a careful reading of the statutes, rabbits are not mentioned or in anywise protected. The statutes are definite as to certain game and place certain restrictions on the killing and taking and use of squirrels, deer, quail and fur bearing animals, but, as stated above, is silent as to rabbits. There is no statute general enough in its terms, except Section 8224, which is broad enough to include rabbits. But conceding, for the sake of argument, that Section 8224 does include rabbits as wild life, the Legislature has never seen fit to pass any statutes prohibiting or regulating the killing, taking or use of rabbits."

Therefore, we are of the opinion that if House Bill No. 218 is not enacted the Commission would have no greater control or authority than the Commissioner of Fish and Game as to rabbits.

From our consideration of House Bill No. 218 it appears to be an Act to provide for the conservation of

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rabbits and the regulation and licensing of dealers therein. Without passing on the merits of the proposed Act or the form of the same, we are of the opinion that if said Bill is enacted the Conservation Commission will have power to control, regulate and conserve cotton tail rabbits to the extent that the Act grants the same to it; that rabbits will have the same protection and regulation, insofar as House Bill No. 218 gives the power to the Commission, as any other species of wild life, animals or fish, as contained in the Fish and Game Laws of the State of Missouri.

Respectfully submitted,

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APPROVED:

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