

CONSERVATION COMMISSION ACT: Fines collected for violation of the Game and Fish Laws go to the county public school fund and not to the Conservation Commission.

SCHOOLS:

March 8, 1938.



Honorable Leo A. Politte,  
Prosecuting Attorney,  
Franklin County,  
Union, Missouri.

Dear Sir:

We acknowledge receipt of your request of February 21st, which is as follows:

"Inclosed herewith please find circular letter which I have received from Conservation Commission, the purpose of which is to divert all fines for the violation of the Game Laws from the County School Funds to Funds of the Conservation Commission.

"I do not believe the terms 'fees, monies, or funds' as used in Amendment No. 4 apply to fines collected in the inforcement of the law of Game & Fish Laws. Certainly this Amendment should be construed stoutly against such a charge.

"I am advising the Judges of this County to ignore this letter until further notice. However, if I receive an opinion from your office stating that these fines must be turned over to the Commission, we will abide by your opinion in the matter."

Attached to the same is a form letter written by the Conservation Commission to all Justices of the Peace and Circuit Judges of Missouri, and of date February 11, 1938, in which form letter a part of Constitutional Amendment No. 4 creating the Conservation Commission is embodied, and in which form letter is also a resolution adopted by the Conservation Commission on January 17, 1938, which

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resolution directs that all Justices of the Peace, Circuit Clerks, "and all agencies which have to do with the assessment and collection of penalties for the infraction of the game and fish laws in the State of Missouri" be notified to transmit all funds accruing from fines levied by Justices of the Peace or Courts for infraction of the game and fish laws of the State to the Conservation Commission at Jefferson City, Missouri, within ten days following the assessment and collection thereof.

The form letter requests that effective March 1, 1938, all monies collected as fines for violation of the game and fish laws and regulations of the Commission "be remitted by you directly to the office of the Conservation Commission at Jefferson City, Missouri," and also states that upon receipt of the same, proper acknowledgement will be sent, and that the Conservation Agent will supply said Justices, Circuit Judges, etc., with proper remittance forms, etc.

We construe your question to be, tersely stated, the following: Do the fines collected in criminal prosecutions for violation of the Game and Fish Laws thereby become a part of the funds that must necessarily under the Conservation Commission Act be used for the purposes of that Act and no other?

In order for such fines to be so allocated by said Conservation Commission Act, it would be necessary that they be included in that part of the said Conservation Commission Act which recites:

"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, \* \* \*" of the wild life resources of the state and for the administration of the laws pertaining thereto.

Section 8 of Article XI of the Constitution of Missouri, defining the source of the county school fund, states:

"All monies, stocks, bonds, lands and other property belonging to a county school fund; \* \* \* also the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the state \* \* \* shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund \* \* \*."

It will be noted that the Conservation Commission Act does not in terms say that all fines, or any fines, shall be expended or used by said Commission. It speaks of the term "fees" and of "funds arising from the operation and transactions of the commission," and the term "monies" as there used is given meaning by the other designations there made and is restricted to monies of the same general nature as those designated.

In United States v. Baumgartner, 259 F. 722, 725, speaking of the doctrine of ejusdem generis, the court says that it

"in its practical application simply means that 'general and specific words which are capable of an analagous meaning, being associated together, take color from each other, so that the general words are restricted to a sense analagous to the less general.'"

The court there said:

"The same maxim or rule was stated by Lord Tenterden in a little different language: 'Where a statute or other document enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces "other" persons or things, the word "other" will generally be read as "other such like," so that persons or things therein comprised may be

read as ejusdem generis with, and not of a quality superior to or different from, those specifically enumerated."

Under that rule it would seem that the fair meaning of the terms "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" does not, as contained in said Conservation Commission Amendment, embrace and include the fines collected in criminal proceedings in enforcing the Game and Fish Laws. To hold that it did would be to repeal by implication Section 8 of Article XI of the Constitution, which latter specifically earmarks "all fines collected in the several counties for any breach of the penal \* \* \* laws of the state."

Repeals by implication are not favored by the law, and neither a statute nor a constitutional provision will be repealed by implication by a later enactment of a statute or constitutional provision, respectively, if meaning can be given to both statutes or to both constitutional provisions. The more worthy desire and the course followed by the courts with reference thereto is to give force and effect to the earlier provision except insofar as the later provision is in conflict or wholly inconsistent with the earlier.

These fines are the result of the enforcement of the criminal laws of the State, rather than the administration of the provisions of the Conservation Commission Act. Said fines must necessarily come within the purview of Section 8 of Article XI, supra. Meaning can be given to this section and also to the Conservation Commission Act by holding that the fines so collected go to the public school fund. Meaning cannot be given to both acts as to the disposition of fines by holding that such fines go to the Conservation Commission.

#### CONCLUSION

It is our opinion that the fines collected in the counties, regardless of whether they be collected in proceedings before Circuit Courts or Courts of Justices of the Peace, as penalties for violation of the Game and Fish Laws cannot

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lawfully be paid direct to the Conservation Commission, and are not such monies or funds as are required under the Conservation Commission Act to be paid to or expended by said Conservation Commission, but, on the contrary, they are to be disposed of under the provisions of Section 8 of Article XI of the Constitution of Missouri, and required to be paid into the county public school fund.

Yours very truly,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

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

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