

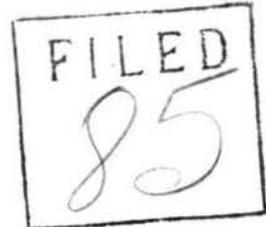
FISH AND GAME DEVICES:  
UNCLAIMED FEES TO BE TURNED  
INTO COUNTY TREASURER:

One or more ordinary hooks on a  
line may be used for catching fish  
provided they are only used as a  
lure and not for snagging or snaring  
fish.

October 13, 1938

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Mr. Roy W. Starling  
Prosecuting Attorney  
Miller County  
Eldon, Missouri



Dear Sir:

Under date of May 9, 1938, this department in response to your request dated May 3, 1938, rendered to you an official opinion on the question of whether or not it was a violation of the law to fish with a line with two hooks upon it. The conclusion reached by that opinion was that such was permitted in this state. When that opinion was rendered, the writer had in mind a line used with two or more ordinary hooks and baited for the purpose of luring the fish to such hook and bait.

After this opinion went out, our attention was called to the fact that some were construing this opinion to mean that a line with one or more ordinary hooks on it could be used for the purpose of snaring or snagging fish. In writing that opinion we did not have in mind fishing with a hook or hooks and line in any manner except the ordinary fishing, that is, with bait on such hooks used as a lure to the fish.

In order to clarify this question, we are withdrawing the opinion rendered to you on May 9th and rendering the following opinion in lieu thereof.

The request for that opinion was as follows:

"I am enclosing herewith a copy of a letter which I am writing the Conservation Commissioner with regard to their method of handling game law violation prosecutions in this county, which is probably self-explanatory.

"I should like to have an opinion from your department stating whether or not the constitutional amendment under which the State Conservation Commission operates gives that Commission the right to prosecute misdemeanors under the statute without information from the Prosecuting Attorney of the county where the offense was committed and what should be done with the fees which the Agent and the Justice of the Peace collected upon such prosecutions handled without information.

"I should like, further, your opinion, if your answer to the first question is that all prosecutions should be handled by the Prosecuting Attorney, whether a man who fishes with a line and has two ordinary hooks on that line is using a 'device' as defined in the statute."

This request involves three questions: First, whether or not a person can be prosecuted without an information being filed; second, in case fees are collected in a case in which no information is filed, what should be done with those fees; third, whether or not one who fishes with a line which has two ordinary hooks upon it is using such a device as is prohibited by Section 8270, R. S. Mo. 1929.

#### I.

As to the first question, I find that this office by an opinion written by Mr. William Orr Sawyers, Assistant Attorney General, under date of June 27, 1935, for Mr. G. R. Breidenstein, Prosecuting Attorney of Clark County, Missouri, covered the subject of your inquiry. From this opinion, a justice of the peace in a misdemeanor case has no jurisdiction to impose a fine without an information on file and filed by the Prosecuting Attorney. This is the law and I am enclosing a copy of this opinion for your information.

II.

Upon the question of the fees collected by officers, from your inquiry it appears that cases were disposed of before the justice of the peace in your county without an information having been filed. It further appears that fees were collected by the officers in these cases. Under the holding of the copy of the opinion which we are enclosing, the officers were not authorized to dispose of the charges against the defendants until an information had been filed, and under the general law no fees are due in a criminal case until the case is finally disposed of.

Section 3948, R. S. Mo. 1929, deals with the subject of officers collecting fees and exacting fees before they are due. This section is as follows:

"Every officer who shall, by color of his office, unlawfully and willfully exact or demand or receive any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall upon conviction be adjudged guilty of a misdemeanor."

In the case of State of Missouri v. Vassel, 47 Mo. 416, 417, the court said:

" \* \* \* It is a mistake to suppose extortion consists alone in taking illegal fees, or more fees than are allowed by law. It is an offense to exact them before they are due. A coroner is guilty of extortion who refuses to take the view of a body until his fees are paid; and so 'if an undersheriff obtains his fees by refusing to execute process till they are paid, or takes a bond for his fees before execution is sued out.'  
\* \* \* \*"

The officers who accepted the fees referred to in your letter are presumed to know the law and that the person from whom they exacted the fees had not been informed against, and that it was unlawful under the provisions of the foregoing section to collect the fees under such circumstances.

Assuming that the fees have been wrongfully collected and have not yet been disposed of, if the parties from whom such fees were exacted cannot be located and the fees returned to them, by virtue of the provisions of Sections 11822, 11823, 11824, 11825, and 11826, R. S. Mo. 1929, such fees should be finally turned into the general revenue fund of the county. Of these sections, Section 11824 provides as follows:

"It shall be the duty of each sheriff, marshal, coroner, clerk of the courts of record, and other officers, on the first day of January and the first day of July in each year, to pay over all fees in their hands belonging to others to the treasurer of the county, with the name and amount belonging to each person, date when collected and in what case, taking from the treasurer duplicate receipts therefor, one of which the officer shall file with the clerk of the county court, who shall immediately charge the treasurer with the same."

From the foregoing, this office is of the opinion that any fees which have been wrongfully collected by any official, that is, in a case in which an information has not been filed, should be returned to those from whom such fees are collected, and if the officers are not able to return such fees, then the same should be turned into the county treasurer as provided by the statutes hereinbefore cited.

III.

On the question of whether a line with two ordinary hooks upon it is one of the fishing "devices" prohibited by statute, we find that Section 8270, R. S. Mo. 1929, provides in part as follows:

"It shall be unlawful for any person or persons to take, catch, or kill, any fish in any of the waters of this state, by means of any trammel net, gill net, fish trap, firearm, rifle or gun or any other kind of net, trap, firearm, device or any other means other than by ordinary hook and line, gig, spear, trot line, artificial bait, or seine, of the kind and at the time, and in the manner permitted by law.  
\* \* \* \*"

This statute refers throughout to fishing articles or devices as in the singular number. Vol. 59 C. J., page 986, Sec. 586, states the rule as follows:

"When necessary to give effect to the legislative intent, words in the plural number will be construed to include the singular, and words importing the singular only will be applied to the plural of persons and things. Even though this rule has been provided for by statute it is to be applied only when necessary to carry out the obvious intent of the legislature."

In the case of *Garrett v. Wiltse*, 252 Mo. 699, 1. c. 711, the court said:

" \* \* \* Now, even in construing public statutes, the rule is to include the plural in the singular number and vice versa."

Applying the foregoing rules of statutory construction to this statute, we think the law was intended to apply

to the plural as well as to the singular number; therefore, the clause "device or any other means than ordinary hook and line" would mean "device or any other means other than ordinary hook or hooks and line or lines." If this were not the rule, then a person fishing with more than one hook and line would be violating the law, or a person fishing with a throw line with a number of ordinary hooks, or a person jug fishing with a number of ordinary hooks attached to it would be violating the law. Such a construction, we think, would be almost an absurdity and we do not think the lawmakers had such in mind when this statute was enacted.

The rule of construction of such a statute is well stated in 59 C. J., page 957, in the following language:

"Where, however, the language is of doubtful meaning, or where an adherence to the strict letter would lead to injustice, to absurdity, or to contradictory provisions, the duty devolves upon the court of ascertaining the true meaning. \* \* \*"

This question hinges on the word "ordinary" hook and line. We think the lawmakers used the word "ordinary" for the purpose of limiting the type of hook or hooks that may be used on the line. As we understand the word "ordinary" hook, as it applies to hook and line fishing, and as is generally used by fishermen, it is the hook with one prong on it to which various types of bait, namely, worms, dough, minnows, etc., are attached for the purpose of luring the fish. It does not include a hook or a number of such hooks fastened together or separately on a line and used without bait for the purpose of snagging or snaring fish. If such hook or hooks are so fastened together or separately attached to a line that they are used for the purpose of snagging or snaring the fish instead of luring them, then such tackle would be within the class "device or any other means" which is prohibited by said Section 8270, supra.

Mr. Roy W. Starling

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October 13, 1938

CONCLUSION

It is, therefore, the opinion of this department that one may fish with one or more ordinary hooks attached to a line so long as such hook or hooks have only one prong and are not fastened together and are baited for the purpose of luring the fish to them, but that such hook or hooks attached together or separately and fastened to an ordinary line may not be used for the purpose of snagging or snaring fish or in any other manner of catching them than by luring them to such hook or hooks.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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