

CONSERVATION  
COMMISSION:

Agents are entitled to certain fees under  
Section 8287 for making arrests.

October 10, 1939

Mr. G. C. Beckham  
Prosecuting Attorney  
Crawford County  
Steelville, Missouri



Dear Sir:

This will acknowledge receipt of your letter of  
September 19, 1939, which is as follows:

"The various Conservation agents operating over the State have been instructed by the State Conservation Commission that they are entitled to collect a fee of \$3.00 for each person they arrest and who is convicted of violating the fish and game laws, said \$3.00 to be taxes as costs and retained by the agent individually. Will you kindly give me your opinion as to whether or not that said \$3.00 should be taxes as costs, and if so is the Conservation agent entitled to retain it in his individual capacity?"

Section 8287, R. S. Mo. 1929, provides:

"When an arrest for a violation of this article is made by any commissioner and the defendant is convicted, there shall be taxed as costs in favor of such commissioner making the arrest the same fees as a constable is entitled to in a case of misdemeanor, and, if collected from the defendant, shall be paid

over to such a commissioner, and shall be his personal perquisite, for which he need not account, but no fees shall be allowed in case of acquittal, nor shall any county or the city of St. Louis be liable for such fees in any event."

In Laws 1937, page 614, there appears the Constitutional Amendment creating the Conservation Commission and defining its powers. Of this amendment, it is said in Marsh v. Bartlett 121 S. W. (2nd) 1.c. 744, "There can be no question but that the Amendment in express terms repealed all existing laws inconsistent therewith."

Section 8287, supra, was in existence at the time the above amendment was adopted, thus we must determine if said section is inconsistent with the amendment creating the Conservation Commission.

By said amendment the "control, management, restoration, conservation and regulation" of all wild life resources of the State is vested in the Conservation Commission. Section 8287, supra, merely gives certain fees to a game warden for the performance of his duties. Without further discussion of the point, we do not see how a statute granting a fee can in any way be inconsistent with the control, management, etc., of the wild life resources of the state that is vested by said amendment in the Conservation Commission. Said section not being inconsistent with said amendment it still remains a law of the state.

The fees that a constable is entitled to for his services in a misdemeanor case are fixed by Sections 11777 and 11791 R. S. Mo. 1929. An examination of these sections does not disclose that said officer is entitled to any flat fee of \$3.00 for making an "arrest." The only pertinent provisions in said sections that can be conceivably construed as applying to give fees to these conservation agents are found in Section 11777, and they are as follows:

"Constables shall be allowed fees for

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their services as follows:

For serving warrant in any criminal case, for each defendant	\$1.00
For taking a criminal to jail	1.00
And for every mile traveled in taking a criminal to jail and returning therefrom, provided the distance so traveled be more than five miles, the sum of, per mile	.10
For each mile actually traveled in serving any process	.10"

We have deleted from this statute other provisions for fees that do not apply to the instant question.

As we read the above statute, it authorizes fees to be taxed as costs for the services of a conservation agent in the following cases and amounts. (1) If the agent makes an arrest under a warrant there is to be taxed as costs \$1.00 for serving that warrant and ten cents per mile for each mile he actually traveled in serving the warrant. (2) If the agent makes an arrest without a warrant (and this can only be for offenses committed in his view) there is to be taxed as costs \$1.00 for taking said offender to jail and ten cents for each mile actually traveled in taking said offender to jail and the return therefrom, provided the distance is over five miles.

Therefore, we are of the opinion that in prosecutions for violation of the rules and regulations of the Conservation Commission where an agent of that body made the arrest, if the defendant is convicted the fees above mentioned are to be taxed as costs and if collected from the defendant belong to and are the personal perquisite of the conservation agent.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney General

APPROVED:

W. J. BURKE  
(Acting) Attorney General  
LLB:RT