

CONSERVATION COMMISSION: Article 5, Section 26 of Missouri  
Constitution vests Conservation  
Commission with authority to dispose  
of lands.

June 21, 1939

Mr. I. T. Bode, Director  
Conservation Commission  
Jefferson City, Missouri

Attention: Mr. A. E. Mayes - Land and Water

Dear Sir:

This department acknowledges your letter of June  
15th, as follows:

"The Conservation Commission inherited  
some property from the old Fish and  
Game Department which it would like to  
dispose of by sale for cash and use the  
proceeds for the work of the Commission.  
The particular land which the Commission  
desires to sell was formerly used for  
hatchery purposes.

Does the Commission, under the provisions  
of Amendment 4, have authority to sell  
this land and use the proceeds for the  
ordinary activities of the Commission?

An opinion concerning this matter will  
be appreciated. In the event any further  
or more specific information is desired,  
we will undertake to supply it."

59 C. J., Section 280, page 167, states the general  
rule with respect to the disposition of state property.

"The power to dispose of state property  
is vested in the legislature which may  
make provisions therefor by statute, and  
the statutory provisions must be complied  
with or the sale will be void."



Authority for the above statement is found in the case of State of Wisconsin v. Torinus, 26 Minn. 1, 49 N. W. 259 l. c. 260, wherein the court said:

"The proprietary rights of a state are as absolute and unqualified as those of an individual. It may, in the absence of any self-imposed restrictions in its constitution, sell and dispose of its property upon its own terms and conditions, for cash or upon credit; and it may also take, hold, and enforce notes and obligations received from the purchasers of its property, the same as individuals can. But as the legislative department is the only one that represents the state in respect to such rights, it alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose."

The above case is cited with approval in the case of Bjurke v. Arens, 281 N. W. (Minn.) 865 l. c. 869:

"In disposing of such lands the state exercises the same proprietary rights as an individual and may sell and dispose of its property upon such terms, for cash or upon credit, as shall be determined by statute. State of Wisconsin v. Torinus, 26 Minn. 1, 49 N. W. 259, 37 Am. Rep. 395."

And again in the case of Henderson v. City of Shreveport, 160 La. 360, 107 So. 139, l. c. 142, wherein the court said:

"\* \* \* it follows that public things cannot be alienated without the express consent of the sovereign, and hence, of that branch of the government to which has been given the supreme lawmaking power."

In the foregoing cases it is evident that in order to dispose of state property a legislative act is necessary.

An amendment was adopted by the people which went into effect July 1, 1937, creating a Conservation Commission pertaining to fish, game and forestry and stating its powers, duties and obligations, as follows: (Laws of Mo. 1937, p. 614, 615):

"The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wild life resources of the State, including hatcheries, sanctuaries, refuges, reservations and all other property now owned or used for said purposes or hereafter acquired for said purposes and the acquisition and establishment of the same, and the administration of the laws now or hereafter pertaining thereto, shall be vested in a commission to be known as the Conservation Commission, to consist of four members to be appointed by the Governor, not more than two of whom shall be members of the same political party. The commissioners shall have knowledge of and interest in wild life conservation. Vacancies shall be filled by appointment by the Governor for the unexpired term within thirty days from the date of such vacancy; on failure of the Governor to fill the vacancy within thirty days, the remaining commissioners shall fill the vacancy for the unexpired term. The first members of said commission shall be appointed for terms, as follows: one for a term of two years, or until his or her successor is appointed and qualified; two

for terms of four years, or until their respective successors are appointed and qualified; one for a term of six years, or until his or her successor is appointed and qualified. Upon the expiration of each of the foregoing terms of said commissioners, a successor shall be appointed by the Governor for a term of six years, or until his or her successor is appointed and qualified, which term of six years shall thereafter be the length of term of each member of said Commission. The members of said Commission shall receive no salary or other compensation for their services as such. The members of the Commission shall receive their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties.

Said commission shall have the power to acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient for the use of the Commission, or the exercise of any of its powers hereunder, and in the event the right of eminent domain is exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the State Highway Commission.

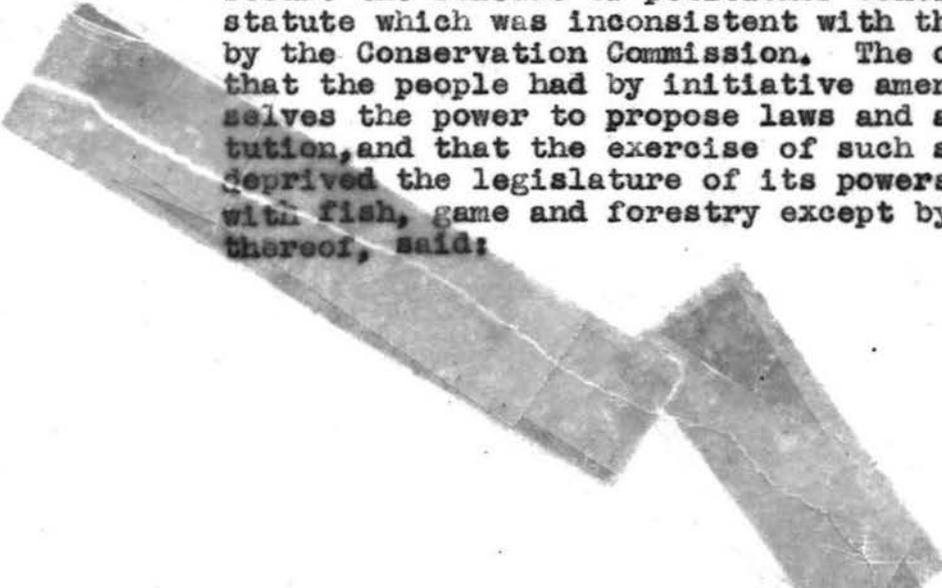
A Director of Conservation shall be appointed by the Commission and such director shall, with the approval of the Commission, appoint such assistants and other employees as the Commission may deem necessary. The Commission shall determine the qualifications of the director, all assistants and employees and shall fix all salaries, except that no commissioner shall be eligible for such appointment or employment.

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, management, restoration, conservation and regulation of the bird, fish, game, forestry and wild life resources of the State, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto and for no other purpose.

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 go into effect July 1, 1937."

The question now presents itself whether the people, by the above amendment, divested the legislature of the power to dispose of state lands dedicated to fish, game and forestry and vested it in the Conservation Commission.

The case of *Marsh v. Bartlett*, 121 S. W. (2d) 737, 1. c. 742, was an original proceeding in habeas corpus to secure the release of petitioner convicted of violating a statute which was inconsistent with the regulation adopted by the Conservation Commission. The court, in pointing out that the people had by initiative amendment reserved to themselves the power to propose laws and amendments to the Constitution, and that the exercise of such sovereignty by the people deprived the legislature of its powers and functions to deal with fish, game and forestry except by enacting laws in aid thereof, said:



"This contention overlooks the change resulting from the adoption, in 1908, of the initiative and referendum amendment, section 57, article 4 of the Constitution, Mo. St. Ann. Const. art. 4, sec. 57. As regards that amendment this court has held that the people in adopting it did not intend merely to confer the grant contained in said sec. 1; it served the one purpose, to recall all legislative power theretofore granted to the end that the whole power to be granted should be subject to the initiative and referendum. State ex rel. Gordon v. Becker, 329 Mo. 1053, 49 S. W. (2d) 146. We therefore hold (1) that the authority was delegated by the people to the General Assembly to legislate by enactment, subject to the referendum clause, and to propose constitutional amendments by enactment of joint and concurrent resolutions; (2) that initiative authority in the people was reserved thus: Vesting the legislative authority of the state in the General Assembly, 'the people reserve to themselves power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independently of the legislative assembly \* \* \*'."

And further, in its opinion, the court said (l. c. 743):

"The reference already made to the power the people reserved to themselves in section 57 of article 4 with the express right to exercise the same without let or hindrance of the General Assembly, will be recalled to mind. This power, a political one, and the exercise of its functions is of the essence of sovereignty which resides in the people. In the Bill of Rights (sec. 1, art. 2) as found in the Constitution, Mo. St. Ann. Const. art. 2, sec. 1, it is declared 'That all political power is vested in and derived from the people; that all government of right originates

from the people, is founded upon their will only, and is instituted solely for the good of the whole.' In view of these reservations of sovereignty and of the right to exercise functions thereof in the State's government, it seems self-evident that the exercise thereof in this particular instance to provide in the mode selected and to the extent effected by an enduring ordinance, policy forming as to its subject matter and rule-delegating as regards the administrative functions and imposed duties, was valid notwithstanding the general field for action by way of statutory enactments had theretofore been entered solely by successive legislatures. That condition, long existing, continued merely because until of late the people did not attempt to exercise their stated reserved authority.

But the present attempt to exercise it does not deprive the legislative department of the government of its power or functions but relates to only a small portion of the power reserved to the people, the exercise of which suspends and supersedes the power of the legislature as to that portion alone which involves the subject matter and its governance as provided in said Amendment."

The people, having suspended the power of the legislature to enact any laws with respect to fish, game and forestry except those "laws in aid of but not inconsistent with the provisions of this amendment", and having declared that "all existing laws inconsistent herewith shall no longer remain in force and effect", created the Conservation Commission with the power of:

"The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wild life resources of the State, including hatcheries, sanctuaries, refuges, reservations

and all other property now owned or used for said purposes or hereafter acquired for said purposes and the acquisition and establishment of the same, and the administration of the laws now or hereafter pertaining thereto, shall be vested in a commission to be known as the Conservation Commission, \* \* \*."

In helping determine what the powers of a Commission generally are, the following statement from 59 C. J., Section 118, p. 11, is helpful:

"Generally speaking, \* \* \* commissions \* \* \* have such powers as may have been delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed upon them."

The Commission has the power of "control" and "management", but we seriously doubt whether these words standing alone would give the Commission the power to sell any of its lands. Thus, in the case of *Blanton v. Mayes*, 58 Texas 422, 1. c. 429, the court said:

"In the management and control of the estate is there an implied power to sell real property for reinvestment so as to secure an income, derivable from the language employed, when considered in connection with the subject matter of the trust? The terms "manage" and "control", standing alone and unaided by other considerations, could not be considered as conferring a power to sell."

The word "regulate", as used in the above Constitutional Amendment, is defined in the case of *March v. Bartlett*, supra, as follows (l. c. 744):

"It includes ordinarily the means to adjust, order, or govern by rule or established mode; direct or manage according to certain standards or rules."

Further examination of the Conservation Amendment reveals that in addition to "the control, management, restoration, conservation and regulation" the Commission is authorized to take -

"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, management, restoration, conservation and regulation of the bird, fish, game, forestry and wild life resources of the State, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto and for no other purpose."

Thus we find an express declaration on the part of the people that property used for fish, bird, game, forestry and wild life may be sold by the Commission and the funds derived therefrom be used by said Commission for said purposes. And we might go further and say that even though there were a doubt as to the meaning of said language, from the nature of the duties imposed on the Conservation Commission there would be an implied authority to sell such property and to use the funds in furtherance of the purposes for which the Commission was created.

From the foregoing, we are of the opinion that Constitutional Amendment No. 4 (Mo. St. Ann. Const., Art. 5, Sec. 26, supra) vests the Conservation Commission with authority

Mr. I. T. Bode

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to dispose of lands inherited by it from the old Fish and Game Department for cash, and use the proceeds for the declared purposes of the above Constitutional Amendment.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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