

CONSERVATION COMMISSION:
GAME AND FISH:

Statutes not inconsistent with the
Conservation Amendment or rules of
the Commission remain in force.

May 26, 1939

531



Honorable Phil M. Donnelly
State Senator
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date where-
in you request an official opinion on the following
statement of facts:

"I would appreciate an official
opinion from your office as to
whether or not the provisions of
Section 8239 have been repealed
by reason of the adoption of the
Conservation Amendment to the Con-
stitution of Missouri.

"Also as to whether or not a per-
son would be guilty of violating
Section 8239, Revised Statutes of
Missouri, 1929, if he sold fur
pelts after February 10, 1939, as
mentioned in said section."

The Conservation Amendment, which was Amendment
Number Four at the General Election in 1936, is now found
in Laws of Missouri, 1937, page 614, and provides as fol-
lows:

"The control, management, restoration,
conservation and regulation of the
bird, fish, game, forestry and all

May 26, 1939

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 nor 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

May 26, 1939

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 section of the statute to which you inquire as to whether or not its provisions are repealed by the aforesaid amendment reads as follows:

"The state game and fish commissioner is hereby authorized to issue a license known as a dealer and shipper's license which is designed to permit the holder thereof to properly use fur pelts for commercial purposes in such manner as will not make difficult the enforcement of the legal requirements for protection of the state's resources of wild animals. Such license may be issued to applicants upon payment of the sum of five dollars to the state game and fish commissioner, in the usual manner as other licenses are issued upon application. The revenue derived therefrom shall be placed in the game protection fund. Dealer's and shipper's license shall authorize the holder thereof to purchase, sell, transport, possess, and commercialize in fur pelts when such pelts have been obtained legally in the state of Mis-

May 26, 1939

Missouri or elsewhere, and when such Missouri pelts are not in 'green' or undry condition at the time of receiving them, when shipped between January 31st and February 10th, of each year. Holders of such license may only secure such license upon the express condition that the officials of the state game and fish department shall have access, freely and untrammelled, to inspect the supply of fur animals or their pelts in the possession of the licensee, and during usual business hours. All licenses must be signed by the holder of said license. Holders of licenses must exhibit the same to any person authorized to enforce the game and fish laws, also to any person, firm or corporation, United States postal authorities, or agent, servant or employe connected with transportation of such pelts. Shipments, originating in Missouri, must be clearly and plainly marked with the name and address of the shipper, his or her license number and the date of shipment, also the words 'fur pelts.' Such shipment must be made only during the legal period for Missouri fur pelts, December 1st to the end of January, if the same be in undry or 'green' condition, but dry or cured pelts may be shipped during the following ten days, ending February 10th. Wolf, coyote and wild cat pelts may be shipped at any time in any condition. The person, firm or corporation to whom such shipment is offered for transportation, must sign his or her name, or the name of the firm or corporation he or she represents, upon the package offered for shipment before accepting such shipments made from any point within Missouri and may be sent to any place within or without the state.

Nothing herein shall be construed to prevent shipments into Missouri, of pelts legally obtained from without this state and consigned direct to a licensed dealer. Each and every member of a firm or corporation, or any agent or employe, or any traveling representative of any firm or corporation as fur buyer or shipper, must be provided with a dealer's license in the same manner as an individual dealer or shipper is required to possess such license, but firms and corporations may secure one or more licenses in the name of the firm or corporation, which are valid when used by any employe, agent or representative if in his personal possession at the time and place where demand is made to see the same."

It will be noted that the Conservation Amendment provides for the control, management, restoration, conservation and regulation of fish and game, etc., by the Conservation Commission.

If the provisions of said Section 8239 are inconsistent with the purpose and intent, and the provisions of the aforesaid amendment or any rule made by the Conservation Commission for the purpose of carrying out the provisions of the amendment, then such statute is of no force or effect.

This department has no information as to whether or not the Conservation Commission has made any regulation or rule pertaining to the provisions of the aforesaid amendment which would be in conflict with the provisions of said Section 8239. Therefore, this opinion will have to be based on the question of whether or not said Section 8239 is in conflict with any of the provisions or is repealed by the Conservation Amendment.

This amendment was before the Supreme Court in *Marsh v. Bartlett*, 121 S. W. (2d) 737. If this Section 8239 is inconsistent with the provisions of the constitutional amendment, then it is repealed. In *Marsh v. Bartlett*,

May 26, 1939

supra, the court said at l. c. 744:

"There can be no question but that the Amendment in express terms repealed all existing laws inconsistent therewith. * * * * *

And at l. c. 745, pars. 20 and 22, the court said:

"The game and fish code, to which reference has been made, comprises more than one hundred sections. It is probable that among them, sections may be found here and there which were not inconsistent and not so repealed, and doubtless other sections that, with slight change, might readily be re-enacted. * * * * *

It will be noted that in the Marsh v. Bartlett case, supra, that the court held that one of the sections of the statute was in full force and effect. That was Section 8311, R. S. Missouri 1929, which provided for a penalty for a violation of the game and fish laws and the court in that case held that this section could also be used as the penalty for the violation of a rule or regulation of the Commission.

Following the same line of reasoning, if said Section 8239 is consistent with the provisions of the amendment and does conserve and regulate game and fish, then it has not been repealed.

CONCLUSION

Therefore, answering your first question and following the foregoing reasoning, it is the opinion of this department that the provisions of 8239, R. S. Missouri 1929, have not been repealed by the constitutional amendment and they are so consistent with the provisions of the amendment that they are in full force and effect until they are repealed or some rule or regulation of the Conservation Commission is made inconsistent with the pro-

visions of said section.

II.

Answering your second question on whether or not a person would be guilty of violating the provisions of said Section 8239, if he sold fur pelts after February 10, 1939.

After examining the various sections of the statutes referring to the protection of game and fish, we think that Section 8238 R. S. Missouri 1929 should be read in connection with Section 8239. This section provides in part as follows:

"It shall be unlawful, for any person to kill any fur-bearing wild animals, or take, have in possession, offer for sale, sell, bargain for, transport or ship the same or any part thereof, or their pelts, at any time except during the period between November 15th and December 31st of each year, and January 1st to January 15th of the following year, except as is otherwise provided for in this article: * * * * *

Under Section 8238, supra, a person is limited in shipping, selling, etc., of fur pelts to the periods November 15th to December 31st and from January 1st to January 15th except as is otherwise provided in that article. The "otherwise provided" clause last above refers to the provisions of Section 8239, supra, permitting the dealer or shipper licensee to purchase, sell, transport, possess and commercialize in fur pelts which are not "green" or undry between January 31st and February 10th. This is just an extension of the time in which such acts may be done by virtue of the provisions of said Section 8238.

We note from the letters attached to your request that your correspondent has indicated that he questions the

May 26, 1939

constitutionality of these sections on the ground that he might be deprived of his property without due process.

While it is not the province of this department to pass upon the constitutionality of such statutes, we respectfully refer you to *State v. Heger*, 194 Mo. 707 which holds that sections relating to game and fish and similar to the provisions here under consideration are constitutional.

We also note from the statement of facts that if the party is guilty of violating the game and fish laws as is set out in your statement that it would work an undue hardship upon dealers and shippers. We think this is a matter that should be directed to the Conservation Commission for correction if the party is correct in his views of the law.

CONCLUSION

From the foregoing it is the opinion of this department that under the provisions of Sections 8238 and 8239, R. S. Missouri 1929, that no person, with or without license, is authorized to purchase, sell, transport, possess or commercialize in fur pelts after February 10th of any year which have been obtained legally in the State of Missouri and which are in "green" or undry condition at the time of receiving them.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

(Acting) Attorney General

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