

BONDS:  
CONSERVATION COMMISSION:  
FISH AND GAME REGULATIONS:

Conservation Commission authorized  
to furnish surety bonds to cover  
distribution agents in the sale of  
hunting and fishing permits.

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December 16, 1942  
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Conservation Commission  
Jefferson City  
Missouri

Attention: Mr. I. T. Bode, Director

Gentlemen:



This will acknowledge receipt of your request, under date of December 11, as to the legality of the Conservation Commission of the State of Missouri, taking out a surety bond on the county clerks in this state as distributing agents for the commission in the sale of hunting and fishing permits; and, the commission paying premiums on same.

Section 16, Article XIV of the Missouri Constitution creates a Conservation Commission of the State of Missouri. This section reads as follows:

"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, in-

cluding 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."

This amendment gives the Commission almost unlimited powers to control, regulate, manage, restore and conserve wildlife in the State of Missouri.

In State v. Bode 342 Mo. 162 loc. cit. 168, the court, in holding that the conservation amendment prevails when any constitutional amendment is in direct conflict with said amendment, such as Section 10, Article VIII of the Constitution of Missouri, and that the latest expression of the people shall prevail, said:

"Relator does not contend that the paragraph presents an ambiguity, and it is admitted that the word 'determine,' as commonly used, means to conclude, settle, decide and fix. If so, the paragraph, standing alone, authorizes the commission to settle the necessary qualifications of a director. We do not understand the relator to otherwise contend. He argues only that the paragraph should be harmonized with Section 10, Article VIII (which requires a residence of one year) by interpolating after the word 'determine' in said paragraph the words 'subject to the provisions of Section 10, Article VIII.' We are familiar with the rule that the provisions of the Constitution should be harmonized. However, if said paragraph is unambiguous and in direct conflict with Section 10, 'the amendment must prevail because it is the latest expression of the will of the people.' In other words, we are without authority, absent an ambiguity, to resort to interpolation. In

this situation 'the rule as to harmonizing inconsistent provisions' is without application. \* \* \* \* \*

Also, in *Marsh v. Bartlett* 343 Mo. 526 loc. cit. 539, the court, in holding that the Conservation Commission shall promulgate regulations necessary for the control, regulation, management, restoration and conservation of wildlife in the State of Missouri, said:

"The sovereign people having enlisted the Conservation Commission as the constitutional agency to exercise the powers and functions granted in Amendment No. 4, it is not our function to consider or to determine the wisdom, the expediency or the policy to be executed by that body. But we are properly concerned with the questioned validity of the Amendment. For the reasons announced we find the validity to be absolute.

"Further, and in reference to the operative effect of the Amendment, and its contained declaration that it is self-enforcing. It seems clear that there is no incongruity in the situation created by it through a rightful and permanent entry into the legislative field, as in the present instance, for the attainment of the Amendment's objective with the harmonious and invited co-operation of the Legislature, so far as may be necessary or helpful, by the latter's future enactment of laws relating to that objective. No doubt should be entertained of the willingness of that body to co-operate with the Conservation Commission in the manner just stated. And the former will doubtless need no reminder that, apart from the Amendment, the Constitution lays upon that body a duty to at least 'pass all such laws as may be necessary to carry all amendments of the Constitution into effect.'"

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"There can be no question but that the Amendment in express terms repealed all existing laws inconsistent therewith. We think the question here is whether there remain sufficient existing laws not inconsistent therewith. And the correct answer is determinative of self-enforcement. The answer is yes, conditioned upon whether there still exist fixed penalties established by statute and now applicable to violations of rules and regulations established by the Conservation Commission. It has been held that such a provision for such additional legislation as may 'aid' the operation of the constitutional amendment does not hold it in abeyance until such legislation is enacted, the word 'aid' signifying to support, help or assist. (State ex rel. Clark v. Harris, 74 Ore. 573, 144 Pac. 109; see 12 Cyc. sec. 106.)"

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"The term 'regulate' will be sufficient for the moment. It includes ordinarily the means to adjust, order, or govern by rule or established mode; direct or manage according to certain standards or rules. (Sluder v. St. Louis Transit Co., 189 Mo. 107, 88 S.W. 648, 5 L. R. A. (N.S.) 186.) Regulation and legislation are not synonymous terms. (In re N. W. Indiana Tel. Co., 201 Ind. 667, 171 N. E. 65, 70.) Regulation is comprehensive enough to cover the exercise of authority over the whole subject to be regulated. (Southern Railroad Co. v. Russell, 133 Va. 292, 112 S.E. 700, 703.)

"It will be remembered that in the body of the Amendment the word 'laws' occurs twice and is therein definitely related to the Legislature or to the legislative power, while the word 'regulate' and kindred words are attributed to the administrative power and duty. Also, as pointed out in our citation of the Grimaud case, supra, punitive laws or laws fixing punishment as for

violations of administrative rules are solely referable to the legislative power and function, and, on the other hand, administrative rules may have the force of law in that violations thereof are punishable as public offenses. Hence it follows that unless there be existing statutes that are not inconsistent with the Amendment but which do in effect fix punishment for acts or conduct that may fairly come within the purview of some rule or rules established by the Conservation Commission, it cannot be said that the Amendment is completely self-enforcing; if the situation be the opposite, our conclusion will be the opposite.

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"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. But that is not of present concern. \*\*\*\*\*"

Under the old Fish and Game Department, prior to the creation of the Conservation Commission, the county clerk was the authorized agent by statute for the sale of hunting and fishing permits. No one questioned the fact, at that time, that such clerk in selling these permits, was liable for said funds as a result of any sale of said permits and his official bond protected the State of Missouri for any deficiency for which he might be responsible, over the state.

It is our contention that in view of Section 16, Article XIV, supra, the two cases construing said amendment hereinbefore referred to, indicate that the Conservation Commission may promulgate any regulation necessary to carry out the functions delegated to that body under said constitutional amendment, except the authority to enact penal provisions for violation of said regulations shall be reserved in the General Assembly. The Conservation Commission

has unlimited authority to adopt regulations such as the appointment of agents for the sale of said permits. It is barely possible that such clerks, under certain regulations, could not properly distribute and sell same in such a case and certainly the commission could adopt such regulations that would permit the appointment of persons better qualified to distribute said permits. There is nothing penal about such regulations.

In anticipation of placing these agents under surety bonds on and after January 1, 1943, and in view of the fact an insurance company informed the commission that they could furnish a surety bond for this purpose, describing same and fixing the penalty for same, the Conservation Commission adopted the following regulation to become effective as of January 1, 1943.

"Sec. 30. DISTRIBUTING AGENTS. -- The Conservation Commission hereby designates and appoints the clerk of the county court in each county and the license collector of the city of St. Louis as distributing agents for such permits as may be stipulated by the Commission, provided that every such clerk before he enters upon the duties of his office shall agree to enter into a bond, provided by the Commission and payable to the State of Missouri in a sum to be fixed and approved by the Commission. The bond shall be conditioned that such distributing agents will faithfully perform such duties as may be delegated to such agents who shall accept, receipt for, and remit to the State Treasurer at the close of each month, all moneys derived from the distribution of such permits, less and except such personal service fees as are herein specifically provided. The Commission reserves the right to designate additional distributing agents whose duties shall coincide with those of the clerks of the county court when acting as distributing agents whosshall before entering upon such duties enter into a bond as hereinabove provided for clerks of county courts when acting as such distributing agents for the Commission. Distributing agents are authorized to charge and collect the service fee of fifteen cents (15¢) for each permit distributed and such additional

distributing agents so designated by the Commission shall accept, receipt for and remit to the Commission at its office in Jefferson City, at the close of each month all moneys derived from the distribution of such permits, except the permitted service fee. Distributing agents shall, at the time of furnishing a permit, furnish each permittee a copy of the Wildlife and Forestry Code supplied by the Commission."

The above regulation and the conservation amendment is ample authority for the purchase of such surety bond. It has been held that a voluntary bond not authorized by any statute, if it does not contravene public policy, is valid also. It is well established law in this State, that a bond taken by a public officer in attempted compliance with a statute is good as a common law bond even if it falls short of filling the requirements of the statute. See, *Burton Machinery Company v. Ruth* 196 Mo. 1. c. 465; also, *Howard County v. Fayette Bank* 347 Mo. 982.

We are also familiar with that principle of law, that in the absence of statutory authority of some kind authorizing such bond, that the state is not liable for the premiums on said bonds; and that said premiums, if paid, may be recovered at a later date. But since the Conservation Commission is authorized to control, regulate and conserve all wildlife in the State of Missouri, as well as expend the money derived from said management and being the only body authorized to spend such moneys, apparently, it is a logical and reasonable conclusion that the qualified voters in the State of Missouri, when enacting the conservation amendment, fully expected the commission to do the wise and expedient thing and to make proper appointments for such distribution and sale of permits; and, likewise to protect said funds while in the custody of the distribution agents, by requiring said agents to be covered by surety bonds. Such regulation requiring said agents to be covered by surety bonds is just as necessary for the protection of said funds as it is to control and regulate wildlife, for without such funds there could be no regulation and control of wildlife by the commission for this is the only available method by which the commission may receive appropriations to carry on the duties under the conservation amendment.

Therefore, such regulation, effective as of January 1, 1943 is in effect and for all purposes of the same effect as legislation enacted by the legislature.

Section 3238 R. S. Mo. 1939, authorizes the purchase of such bonds by the commission when such agents are required by law to furnish same. This section reads as follows:

"Whenever any officer of this state or of any department, board, bureau or commission of this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any county of this state, or any deputy, appointee, agent or employee of any such officer, or any officer of any incorporated city, town, or village in this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any department, bureau or commission of any county, city, town or village, or any deputy, appointee, agent or employee of any such officer; or any officer of any district, or other subdivision of any county, or any incorporated city, town or village, of this state, or any deputy, appointee, agent or employee of any such officer, shall be required by law of this state, or by charter, ordinance or resolution, or by any order of any court in this state, to enter into any official bond, or other bond, he may elect, with the consent and approval of the governing body of such state, department, board, bureau, commission, official, county, city, town, village, or other political subdivision, to enter into a surety bond, or bonds, with surety company or surety companies, authorized to do business in the state of Missouri and the cost of every such surety bond shall be paid by the public body protected thereby."

CONCLUSION.

Therefore, in view of the conservation amendment granting almost unlimited authority to the commission to regulate, control, manage, restore and conserve wildlife in the State of Missouri, and the above Regulation, Section 30, promulgated by the commission, effective as of January 1, 1943, it is the opinion of this Department, that a surety bond covering such agents as the county clerks in the sale and distribution of hunting and fishing permits, constitutes a valid bond and the commission is authorized to purchase same, under Section 3238 R.S. Mo. 1939.

Respectfully submitted

AUREY R. HAMMETT, Jr.  
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APPROVED:

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