

BINDWEED:

Section 14264 Laws of Missouri 1941 survey  
is so indefinite that it is unenforceable.

June 2, 1942

Honorable Sam T. Evans  
Prosecuting Attorney  
Gallatin, Missouri



Dear Sir:

Your request for an opinion has been referred to me.  
This request is as follows:

"I should like to have your opinion concerning Section 14264, Laws of Missouri, 1941, at Page 302, concerning bindweeds.

"The facts are these: Farm having bindweeds upon it is situated in Daviess County, Missouri; owner of farm resides in Texas; owner's agent who rents farm and collects rents resides in adjoining county; tenant of owner is in possession and control of the farm.

"(1) Who is responsible for eradicating and controlling the bindweeds on a above farm?

"(2) According to Sec. 14264, is the owner subject to criminal prosecution?

"(3) Is the agent subject to criminal prosecution?

"(4) Is the tenant subject to criminal prosecution?"

Article 15 of Chapter 102 R. S. Mo., 1939, referred to "Canada and Scotch thistles", and did not refer to "bindweed."

Section 14260 R. S. Mo., 1939, in referring to the aforesaid provides as follows:

"It shall be the duty of every owner, lessee or other occupant of any lands in this state, and of every railroad, partnership, lessee or other corporation of persons owning or operating any railroad in this state, within the limits of the right of way of such railroad, and on all grounds owned or controlled by such company, lessee or person, to cut or cause to be cut down all Canada or Scotch thistles standing, being or growing thereon, or on the road or highway passing through, by or over such lands or right of way, so often in each and every year as shall be sufficient to prevent said thistles from going to seed; and if any owner, lessee or other occupant of any lands, or any railroad company, partnership, lessee or other corporation or person owning or operating any railroads in this state, shall knowingly suffer any such Canada or Scotch thistles to grow thereon, and the seed thereof to ripen, so as to cause or endanger the spread thereof, such corporation, owner, lessee or other person shall forfeit and pay the sum of ten dollars for every such offense; and such sum forfeited may be recovered by civil action, in the name of the road overseer or other person having charge of the streets, roads or highways in the district or place where such thistles may be allowed to grow or seed, before any justice of the peace of the county, city, town or township in which the offense is committed; and all sums recovered by virtue of this section shall be paid to the use of the county school fund."

It is apparent that the intention of the Legislature in 1939 was to eradicate Canada and Scotch thistles in order to benefit agriculture in this State. In 1941, the legislature wishing to further protect farming repealed Section 14264 R. S. Mo., 1939, which is the last section in Article 15 Chapter 102, which section has reference to the neglect of road overseers in their duties as defined in Section 14260 supra. In lieu thereof the General Assembly in 1941, passed Section 14264 and Section 14264a, referring to "bindweed" which Sections are as follows:

Section 14264 Laws of Missouri, 1941:

"It shall be the duty of any person or persons, association of persons, corporations, partnerships, the state highway commission, the county courts, the township boards, school boards, drainage boards, the governing bodies of incorporated cities, railroad companies and other transportation companies or their authorized agents and those supervising state-owned lands to control the spread of and to eradicate by methods approved by the State Department of Agriculture field bindweed (*convolvulus arvensis*) hereby designated as a noxious and dangerous weed to agriculture."

Section 14264a Laws of Missouri, 1941:

"Any person who shall violate any of the provisions of this article shall upon conviction be guilty of a misdemeanor."

In other words, this Article as passed in 1939, had reference only to "Canada and Scotch thistles", but has since been amended to include "bindweed". Section 14260, supra, referring to the former is in detail and is very plain. However, Section 14264, Laws of Missouri 1941, above, is general and vague as to the provisions contained therein and if standing by itself would

be almost impossible to enforce.

The supreme court in State ex rel. Dean vs. Daues 14 S. W. (2d) 990, held that in construing a statute, the entire statute must be considered in order that no section or part of a section in such statute shall fail. In that case the court said, at 1. c. 1002:

"\* \* \* Furthermore, it is an elementary and cardinal rule of construction that effect must be given, if possible, to every word, clause, sentence, paragraph, and section of a statute, and a statute should be so construed that effect may be given to all of its provisions, so that no part, or section, will be inoperative, superfluous, contradictory, or conflicting, and so that one section, or part, will not destroy another. Sutherland on Statutory Construction (2d Ed) pp. 731, 732, Sec. 380."

Also the court said:

"Moreover, it is presumed that the Legislature intended every part and section of such a statute, or law, to have effect and to be operative, and did not intend any part or section of such statute to be without meaning or effect."

See also Mo. Digest, Title "Statutes" Key #206

Therefore, we must examine Article 15, Chapter 102 R. S. Mo., 1939, as amended in 1941, and all of its provisions in order that effect be given to all of such article, if possible, and so that no part of it shall be "inoperative." As can be seen, Section 14264 provides that it shall be the duty of practically all persons to eradicate "bindweed". The statute does not specify where the people are to eradicate such noxious weed, nor does it say how it is to be done. It does state that it shall

be done by methods approved by the State Board of Agriculture. However, what such methods are cannot be learned by reading the statutes. Furthermore, we are unable to learn of the manner in which this section is to be enforced by a study of the remaining parts and section of Article 15, Chapter 102.

It is presumed of course, that the Legislature meant that Section 14264 R. S. Mo., 1939, as amended by the Laws of Missouri 1941, should be in force, but the power to construe sections of the statutes by other sections relating thereto should not be abused. Certainly we cannot say in this case that a criminal prosecution could be based on this statute. In *Diemer v. Weiss*, 122 S. W. (2d) 928, the court said:

"When the language of an act appears on its face to have a meaning, but it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate, it is simply void; for if no judicial certainty can be settled upon as to its meaning, courts are not at liberty to supply the deficiency or make the statute certain.\* \* \* \* \*"

The court also said in *Ex Parte Taft v. Shaw*, 284, Mo. 531, l.c. 544 -545; 225 S. W. 457, l.c. 461:

"Statutes and ordinances which fix crimes, or quasi crimes, should so fix them that there can be no uncertainty. They should be so worded that one could read them, and know whether or not he was violating law. They should not be so worded as to leave their substantive elements to the caprices of either judge or jury. In other words the law should be complete and definite.  
\* \* \* \* \*"

In *State ex inf. Crow vs. Street Railway Co.* 146 Mo. 155, l.c. 167, 168; 47 S.W. 959 l.c. 961, the court said:

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"It is equally true that a mere collection of words can not constitute a law; otherwise the dictionary can be transformed into a statute by the proper legislative formula. An act of the legislature, to be enforceable as a law, must prescribe a rule of action, and such rule must be intelligibly expressed."

The sections in question, to wit, 14264 and 14264a, Laws of Missouri 1941, at #302 attempt to provide a certain course of action with reference to "bindweed" and fixes a violation of provisions of section 14264 supra, as a misdemeanor. There is no doubt that by these two sections, the legislature tried to curtail and control the growth of "bindweed." But the manner in which this is to be done and the persons who are to do it cannot be reasonably deduced from the statutes. The Department of Agriculture has recommended methods which will probably eradicate "bindweed" but does not add anything to the provisions of the statute.

#### CONCLUSION

Therefore, it is the opinion of this Department, that none of the parties mentioned in your request would be subject to a conviction for a misdemeanor under the sections in question, since Section 14264 Laws of Missouri, 1941, is so vague and indefinite that it is unenforceable.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

JSP:AW