CONSERVATION COMMISSION: LEGISLATION:

The authority of the Legislature under Section 16, Article 14 of the Constitution of the State of Missouri.

February 26, 1943

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Honorable C. K. Armstrong
Representative, Third District
Greene County

Honorable Lee Hamlin
Representative, Tenth District
Jackson County

Missouri House of Representatives
Jefferson City, Missouri

Gentlemen:

This will acknowledge receipt of your request for an opinion under date of February 9, 1943, which reads:

"We respectfully request a ruling from your office as to the power of the General Assembly to legislate upon questions concerning the administration of the State Conservation Commission. Clearly, the 'control, management, restoration, conservation and regulation of bird, fish, game, forestry and all wild life reservations of the State' is vested, by the constitutional provisions, Article XIV, Section 16, in the Commission.

"However, after setting forth certain other provisions, having to do with the personnel, tenure, etc., of the members and officers of the Commission, the constitutional section states:

"'The General Assembly may enact laws in aid of

but not inconsistent with the provisions of this amendment.'

"We do not think it was the meaning or intent of this section to preclude or prohibit any further fish, game and general wild-life legislation. What acts, then, are 'in aid of but not inconsistent with' this section?

"Specifically, the Commission has drawn up numerous rules and regulations. Could not the General Assembly pass legislation modifying, or amending, any such rules, if not inconsistent with the powers specifically granted the Commission?

"Let us take for example the rule which requires agents of the Commission to carry guns at all times. Nothing in the constitutional section pertains to the arming of agents nor their conduct generally. Could not the General Assembly enact legislation affecting such administrative acts of the Commission and its agents, without infringing upon the powers granted the Commission?

"Cannot the General Assembly legislate upon the conduct of agents in search and seizure matters? In matters relating to the construction of fish ladders? In reports made by the Commission to the public?"

The people of this State on November 3, 1936, adop-

ted an amendment to the Constitution of this State now designated as Section 16 of Article XIV of the Constitution, the pertinent portions of which are as follows:

> "The control, management, restoration, conservation and regulation of the bird, fish, game and 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. * * * * * * * * * * * * * * * 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."

This constitutional amendment has been held valid and self-enforcing except as to penalties by our Supreme Court. (Marsh v. Bartlett, 121 S. W. 2d 737).

The General Assembly normally has all powers of legislation except those expressly restrained by the State and National Constitutions. (State ex rel. Barker v. Merchant's Exchange Bank, 190 S. W., l.c. 901; 269 Mo. 346; Wire Co. v. Wollbrinck, 275 Mo. 339, l.c. 350, 351). However, the people, by the adoption of the conservation amendment, took from the Legislature its authority to enact laws with reference to the "control, management, restoration, conservation and regulation of" the wild life and wild life resources of the state by placing such authority in the

Conservation Commission. This is demonstrated by the following language found in Marsh v. Bartlett, 121 S. W. (2d) 737, l. c. 743:

> "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. More than that, neither the submission nor the adoption of the Amendment was the exercise of a legislative function; it was an organic function, organically exercised; the General Assembly is without constitutional power to propose an amendment by the initiative process." (Emphasis added)

It was further ruled at l. c. 744:

> "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. * * * * "

Furthermore, "the administration of the laws now or hereafter pertaining thereto" is vested in the commission. By the closing language of the amendment it is provided that the General Assembly may enact any laws in aid of but not inconsistent with it; that all laws inconsis-

tent with the amendment are no longer effective; and that the amendment shall be self-enforcing.

The Legislature cannot enact any manner of legislation in conflict with the conservation amendment. The Supreme Court of Missouri has even held that the provisions of the conservation amendment prevail over the constitutional amendments adopted prior thereto when in conflict with said conservation amendment. In State ex inf. v. Bode, 342 Mo. 182, 113 S. W. (2d) 805, it was ruled that the conservation commission could appoint a director of conservation who had not resided within this State for one year immediately preceding his appointment, contrary to Section 8 of Article X of the Constitution which provides that officers appointed shall have resided in the state one year preceding such appointment for the reason that the conservation amendment provided that the commission should determine the director's qualifications, and it was the latest expression of the will of the people.

The constitutional provision places in the commission "the control, management, restoration, conservation and regulation of bird, fish, game, forestry and all wild life reservations of the State" together with "the administration of the laws now or hereafter pertaining thereto." Difficulty may be expressed in finding as broad and general terms with which to transfer sweeping and far reaching power and equal to those used in the amendment.

The word "control" as defined by Webster's New International Dictionary means "to exercise restraining or directing influence over; to dominate; regulate; hence, to hold from action; to curb;". Words and Phrases, Vol. 9, page 429, states: "The word 'control' when broadly used, may embrace every form of control, actual or legal, direct

or indirect, negative or affirmative, * * * ".

The word "management" as defined by Webster's New International Dictionary means "act or art of managing; the manner of treating, directing, carrying on, or using, for a purpose; conduct; control. Judicious use of means to accomplish an end; * * * ". Words and Phrases, Vol. 26, page 267, states: "Management is defined as government, control, superintendence, physical or manual handling or guidance, the act of managing by direction or regulation, or administration; * * * * "

The word "regulate" is defined in the Marsh case, supra, at l. c. 744 as follows: "The term 'regulate' will be sufficient for the moment. It includes ordinarily the means to adjust, order, <u>or govern by rule or established mode</u>; direct or manage according to certain standards or rules. * * * * " (Emphasis added).

Section 16 of Article XIV vests in the Conservation Commission the power to govern, rule and manage, according to rules made by the commission, all matters relating to bird, fish, game , forestry and wild life of the State.

The Supreme Court has held (Marsh v. Bartlett, supra) that, by reason of Section 57, Article XIV of the Constitution of Missouri (the initiative amendment), the people did not intend not only to keep the grant contained in Section 1 of such provision, but also made it serve the purpose to recall all legislative power theretofore granted to the end that the whole power should be subject to the initiative and referendum. By the adoption of the constitutional amendment creating the Conservation Commission the people

withdrew from the Legislature its power to legislate on the subject matter contained in such amendment and vested the sovereign power of the people in the Conservation Commission. Such powers as are necessary to control, manage, restore, conserve and regulate the bird, fish, game, forestry and wild life of this State are now vested in the Conservation Commission by virtue of said constitutional amendment. In this constitutional amendment power is given by the sovereign people to the Legislature to make any law that may aid the Conservation Commission in carrying out and effectuating the purposes and intentions of the people as expressed in said constitutional amendment.

However, the Legislature has no power to fix any limitation or control over the Conservation Commission in the exercise of its management and regulation concerning the matters named in the amendment. The test to be applied in determining the validity of legislation concerning wild life is not whether the commission has adopted a regulation upon a particular subject but is whether the amendment authorizes the commission to make regulations on that particular matter.

The Legislature does not have the right to regulate the construction of fish ladders as the amendment gives such authority to the commission by vesting in that body the "control, management, restoration, conservation and regulation of * fish."

The Legislature has no authority or power to interfere with the Conservation Commission using whatever reasonable method it may deem necessary to conserve and restore bird, fish, game, forestry and the wild life re-

sources of the State. If the commission deems it is necessary to carry out such purposes it may arm its agents, or any agent.

Neither does the General Assembly have the authority to pass any act that would prohibit agents of the Conservation Commission from making reasonable searches and seizures in executing the commission's power and authority to control, regulate and conserve bird, fish, game, forestry and wild life. Thus the Legislatute cannot, by statutory enactment, interfere with the commission in controlling, conserving and carrying out every purpose expressly and necessarily impliedly given the commission by the amendment. The determination of what is necessary and the method that is necessary to carry out the purposes of the amendment is vested in the commission and not in the Legislature.

The Conservation Amendment does not authorize the commission to assess penalties for the violation of regulations, and the Legislature thus has the authority to determine what punishment, if any, will be inflicted for such violations. In Marsh v. Bartlett, supra, l. c. 744, the following appears:

> "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. * * * * * * * * * 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."

CONCLUSION

This department is of the opinion, based upon the decisions of State ex inf. McKittrick v. Bode and Marsh v. Bartlett, that the Legislature has no right to legislate upon subjects exclusively given to the Conservation Commission. Our judgment is that, at the present time, the Legislature's action with reference to wild life is confined to the determination of what punishment, if any, may be imposed for violations of the commission's regulations.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General

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