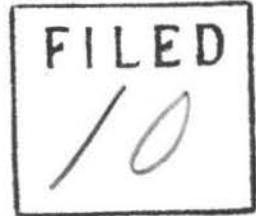


CONSERVATION COMMISSION:
CONSTITUTION:

Conservation Commission is unauthorized
to pay out public funds for a short-
term insurance policy on conservation
agents for two-day open deer season.

August 24, 1944



State Conservation Commission
Jefferson City, Missouri

Attention Mr. I. T. Bode, Director

Gentlemen:

This will acknowledge receipt of your request for
an official opinion under date of August 17, 1944, which
reads:

"I should like to have from your office
an official opinion as to whether or not
the Conservation Commission could legally
pay the premium on short-term insurance to
cover our agents during the deer season,
which has been established for November 2
and 3 for this year."

The Conservation Commission was created by virtue of
Section 16, Article XIV, of the Constitution of the State
of Missouri, which vests in that body very broad powers to
regulate, control, manage, and conserve the wildlife resources
of the State of Missouri, and practically leaves to the dis-
cretion of the Conservation Commission the manner of execut-
ing such authority. Said Amendment reads:

"The control, management, restoration, con-
servation and regulation of the bird, fish,
game, forestry and all wild life resources
of the State, including hatcheries, sanctu-
aries, 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 here-
after 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."

We think it will be conceded by nearly everyone that it is not essential to the control, management, restoration, conservation, and regulation of wildlife in this state, that a short term life insurance policy be taken out on each agent during the open deer season, which consists of only two days. In this state it has been permissible heretofore to hunt deer, and, so far as we know, at no time did any state department take out insurance on its agents during the open season. It might be argued that it would be just as essential to take out a term policy on the hunters, or further that various state departments should be permitted to take out insurance on its employees traveling upon the highways of this state, for the benefit of said employees.

As we read your request, we assume that the Conservation Commission contemplates paying for said premium, and that should any accident occur, the family or others named by the agent would be the beneficiaries under said insurance policy, and not the Conservation Commission. In other words, it is for the sole benefit of the agent. It is something that normally would be expected of the agent and not his employer. This might be con-

sidered the taking of public funds and appropriating them for a private purpose, which, if true, is in direct violation of the Constitution.

Section 46, Article IV, of the Constitution of the State of Missouri is an inhibition against the granting of public funds to individuals, and reads:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

Furthermore, Section 19, Article X, of the Constitution of the State of Missouri provides that no money shall ever be paid out of the state treasury of this state without an appropriation act specifying the amount and object for which it is to be applied. Said section reads:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have been issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

While there has heretofore been some question as to the necessity of an appropriation act by the General Assembly for the Conservation Commission, we will not go into that at this time, but assume, for the sake of this opinion, that it is a necessary prerequisite for obtaining money for expenditures

incurred by the Conservation Commission. If such be the case, then we must look to the appropriation act to be guided by the nature of expenditures contemplated when the General Assembly passed said appropriation bill. In Section 18, Laws of 1943, page 227, we find the appropriation bill as passed by the 62nd General Assembly for the Conservation Commission for the biennium 1943-1944, and nothing contained therein specifically authorizes the purchase of life insurance on conservation agents.

If we follow the provisions of Section 19, Article X, of the Constitution, supra, then absent an appropriation by the General Assembly, such an expenditure as is herein contemplated would be invalid.

Furthermore, there are certain exceptions to the foregoing constitutional provisions prohibiting expenditure of public funds to individuals, such as for the payment of pensions, etc., but as a general rule such amendments making exceptions to the general rule are limited to firemen, policemen, members of educational institutions, etc., and none could be construed so as to grant term insurance for conservation agents, as mentioned in your letter.

Section 47a, Article IV, of the Constitution of the State of Missouri provides that nothing in this Constitution shall prevent grants from public funds to persons employed and paid out of any public funds, for educational services, and reads:

"Nothing in this Constitution contained shall be construed as prohibiting payments, from any public funds, into a fund or funds, for paying benefits, upon retirement, disability, or death, to persons employed and paid out of any public fund, for educational services, their beneficiaries, or their estates."

Section 47, Article IV, of the Constitution further provides that nothing in the Constitution shall prohibit the General Assembly from authorizing any municipality in this state to pass ordinances pensioning members of the fire department and widows and minor children of deceased members thereof; also said section permits the payment of blind pensions and old age pensions, which could not be paid absent a constitu-

tional provision so authorizing such payments.

Likewise, Section 48a of Article IV provides authorization for pensioning policemen.

From a reading of the foregoing constitutional provisions, it is easy to see that it was definitely intended that public funds should never be expended for private purposes, but only for public purposes, except when some specific exception is contained in the Constitution itself, such as found in Sections 47a, 47 and 48a of Article IV, supra.

Furthermore, Section 16 of Article XIV, supra, provides that the fees, monies or funds arising from the operations and transactions of the Commission "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," which, in the opinion of the writer, would of itself prohibit the purchase of term insurance.

The only power vested in the Conservation Commission is derived by virtue of the provisions of Section 16, supra. As stated in Aetna Ins. Co. v. O'Malley, 124 S. W. (2d) 1. c. 1166:

" * * * 59 C. J., section 285, page 172, section 286. In the last citation the author says: 'Public officers have and can exercise only such powers as are conferred on them by law, * * *.'"

As the writer reads this Amendment, there is only one provision therein that could possibly permit the purchase of a term insurance policy, and that reads:

" * * * 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. * * *"

We contend that by the use of the word "salary" it was never contemplated that the Commission in fixing a salary could partially compensate the employee in money and pay the balance with a term insurance policy upon the agent, payable at death to the beneficiary of said agent, and not the Commission, but that by the use of the word "salary" in the foregoing Amendment the intention was that a certain stipulated amount of money was to be paid said employees monthly or annually. That is the ordinary and usual construction given the word "salary" when referring to the salary of a public officer or employee.

Funk & Wagnalls New Standard Dictionary defines "salary" in the following manner:

"A periodical allowance made as compensation to a person for his official or professional services or for his regular work."

If the people of this state in adopting the Conservation Amendment had intended that the Conservation Commission should pay for term insurance on the life of any agent, they could have so stated in the Amendment, but by the use of the word "salary" undoubtedly they intended such employees should be paid a certain stipulated amount of money.

In *Kogel v. McGoldrick*, 45 N. E. (2d) 817, l. c. 819, the Court of Appeals of the State of New York in construing the words "salary or compensation" as used in Section 245 of the Military Law, Consol. Laws, ch. 36, said:

" * * * The 'salary or compensation' for military service referred to therein must be taken to mean the regular 'pay' of an army officer as distinguished from the 'allowances' which he may receive in substitution for subsistence, quarters, and like military essentials which are usually supplied by the government in kind."

In *Rebadow et al. v. Buffalo Savings Bank*, 117 N.Y.S. 282, l. c. 284, the court said:

"The first and second causes of action are sufficiently pleaded. A salary is a fixed sum to

be paid by the year or periodically for services. Burrill's Law Dictionary. * * *

In the case of *In re Chancellor*, (Md.) 1 Bland, 595, l. c. 630, the court defines "salary" as follows:

"A salary is a compensation for services rendered; it is the periodical payment of a certain value, in money, * * * ."

Certainly, in view of the foregoing authorities defining "salary", the Conservation Commission would not be permitted to pay for a short term policy on its agents during the two-day open deer season, under the Conservation Amendment.

Furthermore, the Workmen's Compensation Act lends some assistance in determining your request, for the reason that Act specifically provides in Section 3694, R. S. Missouri, 1939:

"The word 'employer' as used in this chapter shall be construed to mean:

* * * * *

"(b) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi-corporation, or cities under special charter, or under the commission form of government, which elects to accept this chapter by law or ordinance. * * *"

which indicates that the General Assembly of the State of Missouri is of the opinion that, prior to the foregoing enactment, neither the state nor any political subdivision thereof had been authorized to take out insurance on employees and pay for said insurance out of public funds. Whether such a provision in the Workmen's Compensation Act relative to the state or any political subdivision thereof electing to come within the Act

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is constitutional, we need not pass upon at this time. However, at no time has the state ever elected to come under the said Workmen's Compensation Act, and therefore it is not subject to the provisions thereof.

CONCLUSION

Therefore, in conclusion, we are of the opinion that to permit the Conservation Commission to pay for such short-term insurance policies as contemplated by your request would amount to the payment of public funds for private purposes, in direct violation of the Constitution of the State of Missouri, and furthermore the Conservation Commission would be exceeding its constitutional authority under Section 16, Article XIV, supra.

Respectfully submitted

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APPROVED:

ROY MCKITTRICK
Attorney General

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