

CRIMINAL LAW:

CONSERVATION COMMISSION:

Section 8967, R. S. Mo. 1939,
fixes a penalty for the violation
of rules and regulations adopted
and promulgated by the Conservation
Commission.

July 17, 1945

7/21



Honorable John H. Keith
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an
official opinion under date of June 26, 1945, which reads:

"A conservation agent informs me
that he has evidence a person took
game fish from a small stream in this
county on the 24th inst. by means of
a gig, in violation he claims of Sec-
tion 61, of the Wildlife-Forestry Code
of the State of Missouri, prepared by
the Conservation Commission prior to
the adoption of the new constitution
last February.

"This Section referred to fixes no
penalty. What would be the penalty?

"In view of the provisions of Section
31, of the Bill of Rights of the new
constitution, has the Conservation Com-
mission the power to promulgate rules
and regulations fixing penalties for
their violation?

"Sec. 31 of the Bill of Rights pro-
vides:

"That no law shall delegate to any
commission, bureau, board or other ad-
ministrative agency authority to make
any rule fixing a fine or imprisonment

as punishment for its violation.'

"Let me have your opinion, please."

Section 16, Article XIV of the old Constitution, now Sections 40 to 46, inclusive, Article IV, pages 36 and 37 of the new Constitution, vests in the Conservation Commission the authority to control, manage, restore, conserve and regulate all wildlife resources in this state. Section 40 reads in part:

"The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state, including hatcheries, sanctuaries, refuges, reservations and all other property owned, acquired or used for such purposes and the acquisition and establishment thereof, and the administration of all laws pertaining thereto, shall be vested in a conservation commission consisting of four members appointed by the governor, not more than two of whom shall be of the same political party. * * *"

Section 31, Article I of the Bill of Rights under the new Constitution, page 18, provides that no bureau, board or other administrative agency shall have authority to fix a penalty for the violation of its rules. Said section reads:

"That no law shall delegate to any commission, bureau, board or other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation."

We are of the opinion that the foregoing provision under the Bill of Rights in the new Constitution was not necessary, for the reason that prior to its adoption the law was well established that the Legislature could not delegate its authority to fix a penalty provision for the violation of any law, rule or regulation. In Volume 12 C. J., Section 338, page 352, we find the following principle of law:

"As a general rule, the legislature may not delegate to a commission the power to prescribe a penalty. It may, however, authorize a railroad commission to prescribe duties on which a statute imposing a penalty may operate; * * *"

July 17, 1945

Also see Section 333 of the same volume, page 848, which reads:

"It is the function of the legislature, as a part of its police power, to make laws for the protection of the public health, and this power may not be delegated to an officer or board. The legislature, however, having enacted such laws in general terms, may confer on a board of health the duty of enforcing them, and to that end may give it authority to make reasonable rules and regulations which shall have the effect of law. The board may not itself prescribe a penalty for the violation of its regulations, but it is competent for the legislature to prescribe a penalty for the violation of rules and regulations thereafter made by the board."

In State of Florida v. Atlantic Coast Line Railway Company, 32 L. R. A., New Series, 639, l.c. 660, the court said:

"Under the Constitution the legislature may confer upon the railroad commission judicial powers, but not exclusively or purely legislative powers. The power to prescribe penalties to be incurred for breaches of public duty appertains to the legislative department, to be exercised by the enactment of laws. It may not be proper for the legislature to delegate the power to make a law prescribing a penalty, but it is competent for the legislature to authorize the commission to prescribe duties upon which the law may operate in imposing a penalty and in effectuating the purpose designed in enacting the statute. * * * *"

In view of Section 31, supra, there can be no doubt that the Legislature is prohibited from delegating to the Conservation Commission, or any other agency, the power to impose a fine or imprisonment for violation of a rule adopted by it. However, the Conservation Commission does have authority to promulgate reasonable regulations for the control and regulation of wildlife.

July 17, 1945

No statute has been enacted fixing a penalty for the violation of rules and regulations subsequent to the adoption of the constitutional amendment creating the Conservation Commission. However, Section 8967, R. S. Mo. 1939, fixes a penalty for violation of any act prohibited by the Fish and Game Laws of the State of Missouri when no penalty is otherwise specifically provided. Said section reads:

"Any person violating any of the acts prohibited by the fish and game laws of the State of Missouri, a penalty for which is not otherwise specifically provided, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished in the same manner as provided for other acts of misdemeanor under the laws of this state."

The court, in the case of Marsh v. Bartlett, 121 S. W. (2d) 737, l.c. 745, held that the above section applies to all reasonable rules and regulations promulgated by the Commission. In so holding 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. But that is not of present concern. However, on casual examination we find a penalty section that obviously has not been repealed. It is section 8311, R. S. 1929, Mo. St. Ann. Sec. 8311, p. 4113, reading as follows: 'Any person violating any of the acts prohibited by the fish and game laws of the state of Missouri, a penalty for which is not otherwise specifically provided, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished in the same manner as provided for other acts of misdemeanor under the laws of this state.'

"It therefore follows that penalizing and general section 8311 appropriately operates upon all violations of reasonable rules and regulations established by the Conservation Commission concerning the matters committed to it by said Amendment No. 4. * * * * *"

Honorable John H. Keith

-5-

July 17, 1945

Therefore, in view of the foregoing authorities holding the Legislature is the only body that can fix punishment for violation of laws and rules and regulations, and also that Section 31, Bill of Rights of the new Constitution, does not in any manner change this authority, it is the opinion of this department that Section 2967, R. S. 1939 (same as Section 8311, R. S. 1929), fixes a penalty for the violation of reasonable rules and regulations promulgated and adopted by the Conservation Commission of the State of Missouri.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

ARN:ml