

CONSERVATION COMMISSION: Employees of a resident state bait dealer
cannot trap minnows under permit issued
FISH AND GAME: to employer.

FILED

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10-4
Honorable Frank M. Adams
Prosecuting Attorney
Polk County
Bolivar, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"I respectfully submit the following question concerning Section 19, 'J' of the Wildlife and Forestry Code entitled, Residents State Bait Dealers Permit.

"Question: In trapping minnows under the above section can the licensee employ agents to run traps without the agents having a licence issued to them."

In so far as we can determine, this particular regulation referred to in your request has never been construed by any of the appellate courts of this state.

It is a well established rule of statutory construction that different sections of an act relating to the same general subject matter must be construed together and, if possible, harmonized. The same rule is applicable to regulations. See Parks v. State Social Security Commission, 160 S.W. (2d) 823, 236 Mo. App. 1054; also, Johnson v. Kruckemeyer et al., 29 S.W. (2d) 730, 224 Mo. App. 351.

A careful examination of the following regulations may aid in construing Section 19, subsection (J), Wildlife and Forestry Code of the State of Missouri, which reads:

"Sec. 19. Resident permits.--Subject to the provisions of these regulations, permits may be obtained by residents of this

state as evidences of granted and revocable privileges to pursue, take, transport, ship, buy, sell, store, serve, use or possess certain wildlife, throughout the state, except as otherwise specifically provided (see Sec. 19-D), upon the payment of the fees hereinafter stipulated.

* * * * *

"(J) Resident State Bait Dealer's Permit \$10.00.--To possess, propagate and sell live minnows, crayfish and frogs for bait upon the payment of a resident bait-dealer's permit fee of ten dollars (\$10.00)."

Section 12 of the Wildlife and Forestry Code of Missouri, 1948, requires that all permits shall be signed by and carried upon the person of the permittee, or posted in the place of business of the holder thereof when so required, and reads:

"All permits shall be signed by and carried upon the person of the permittee, or posted in the place of business of the holder thereof when so required, and shall, on demand, be exhibited to any officer charged with the enforcement of these regulations, or to any transportation company or postal employee to whom is presented any wildlife for shipment."

There is no specific statute or regulation requiring a resident state bait dealer to post his permit in his place of business. Furthermore, in view of Section 12, supra, it would be impossible for an agent or employee of such permittee to be afforded the same protection as said permittee, his employer, if he should be carrying the permit issued to his employer.

Under Section 13 of said Wildlife and Forestry Code of Missouri it requires all permits issued pursuant to these regulations are nontransferable. Said section reads:

"All permits, issued pursuant to these regulations, are nontransferable, and shall expire on the last day of the calendar year for which issued except as otherwise stated on the face thereof,

unless sooner revoked or suspended for cause; and no affidavit, receipt or other document may be used in lieu of the required permit."

Also, Section 54 of said Wildlife and Forestry Code of Missouri authorizes the holder of a resident bait dealer's permit to take minnows from the wild stock of this state, and reads:

"Minnows, crayfish, and frogs, as herein defined, which have been propagated or legally possessed by the holder of a resident bait dealer's or game breeder's permit, may be bought, sold, transported or shipped by such permittee for bait at any time in any quantity. Minnows and crayfish may be taken for commercial purposes by the holders of resident bait dealer's permits, by hand or by the use of wire traps of a mesh not smaller than one-fourth inch ($\frac{1}{4}$ ") bar measure, and with no entrance opening larger than one and one-fourth inch ($1\frac{1}{4}$ ") in any dimension."

It has been the practice in this state that, when in pursuit or taking wildlife, the Conservation Commission of this state issues permits in such cases only to individuals for their sole use, and are not issued to corporations or partnerships. There are only a few instances when one single permit is all that is required for a permittee and his employees. One instance is in case of a game breeder's permit. However, the reason for that is that the permittee and his employees are not pursuing or taking wildlife, but merely possessing and using same. It is apparent that one reason the Commission has required each individual to take out a permit in most instances is for the reason that it makes it much easier to enforce the laws of this state and the regulations promulgated by said Commission. If several persons were allowed to use a single permit issued to an individual, when in pursuit of or taking wildlife, it would be almost impossible to enforce said laws and regulations.

Hon. Frank M. Adams

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CONCLUSION


Therefore, considering all the foregoing regulations together and in view of the foregoing rule of construction, it is the opinion of this department that the permit issued to a resident bait dealer under and by virtue of the provisions of Section 19, subsection (J), supra, can only be used by the permittee and not his employees.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
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APPROVED:

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