

CONSERVATION COMMISSION:  
WILDLIFE:

Conservation commission is authorized  
to require permit from dealers selling  
fish lawfully acquired in foreign state.



May 28, 1954

Honorable William J. Geekie  
Prosecuting Attorney  
City of St. Louis  
Municipal Courts Building  
14th and Market Streets  
St. Louis, Missouri

Attention: Jasper R. Vettori,  
Associate Prosecuting Attorney

Dear Sir:

Reference is made to your request for an official opinion  
of this department reading as follows:

"It has been called to our attention  
that a number of individuals are en-  
gaged in the sale of fish consisting  
of Carp and Buffalo without being li-  
censed by the Missouri Conservation  
Commission. It is contended no such  
permit is required because the fish are  
acquired in the State of Illinois.

"These persons are licensed by the City  
of St. Louis as Hawkers and in the main  
sell the fish from trucks. The fish are  
purchased at Grafton, Illinois and trans-  
ported here.

"Article 4, Section 40 (A) of the Missouri  
Constitution gives to the Conservation  
Commission the power to control, manage,

Honorable William J. Geekie

restore, conserve and regulate fish, etc. and Wildlife Resources of the State. The rules and regulations of the Commission for 1954, page 33, section (J) and section 51, page 46, require the vendors of fish have a permit from the Conservation Commission.

"Because the fish in question are acquired in the State of Illinois as evidenced by bills of sale in the possession of the vendors as required by section (J) previously referred to, it is the contention of these persons that the Commission is exceeding its jurisdiction in attempting to regulate and control the sale of such fish in this State.

"We would appreciate the benefit of an opinion from your office concerning this question." (Emphasis theirs.)

Article 4, Section 40 (a) of the Constitution of Missouri, reads in part as follows:

"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. \* \* \*"

As pertinent to the subject matter of the present inquiry we also direct your attention to Section 45 of the same article of the Constitution which reads as follows:

Honorable William J. Geekie

"The rules and regulations of the commission not relating to its organization and internal management shall become effective not less than ten days after being filed with the Secretary of State as provided in section 16 of this article, and such final rules and regulations affecting private rights as are judicial or quasijudicial in nature shall be subject to the judicial review provided in section 22 of article V."

The rules which have been promulgated by the conservation commission and which you have referred to in your letter of inquiry read as follows:

Section 45, Sub-Section (J),

"(J) Resident state retail vendor's permit \$2.00.--To possess, transport, buy and sell, exclusively for retail purposes, rabbits, the carcasses of furbearing animals, and only such frogs and fish, except minnows, as are permitted to be sold by this code and which have been legally obtained and supported by a bill of sale, upon the payment of a resident retail vendor's permit fee of two dollars (\$2.00)."

Section 51,

"Sec. 51. Commercial fish: turtles: limits, sale.--Commercial fish and turtles taken exclusively from the Missouri River, the Mississippi River, or that part of the St. Francis River which forms a boundary between the States of Missouri and Arkansas by the holder of the prescribed commercial fishing permit may be possessed, transported and sold in any numbers by the holder of such permit; provided, however, that channel catfish (*Ictalurus*), all species, taken from the aforesaid waters of this state, shall for the purpose of

Honorable William J. Geekie

this section retain the head and tail and be not less than fifteen (15) inches in length. Commercial fish taken from the aforementioned waters, or legally obtained from without the state, may be possessed, transported and sold by the holder of a wholesale fish dealer's or retail vendor's permit in any numbers during the prescribed open season. The holder of a wholesale fish dealer's or retail vendor's permit shall conduct such business exclusively at the location specified in the permit; provided, however, that the holder of a retail vendor's permit may sell only cooked fish at locations other than that specified in the permit. The holder of a wholesale fish dealer's permit may sell, transport, ship, distribute and deliver such fish to an authorized retail vendor, or other wholesale fish dealer, and authorized retail vendors may transport, sell and deliver same exclusively to consumers." (Emphasis ours.)

We pass over any violation of law which might arise from persons selling from trucks at more than one location, which might be inferred from the phraseology of your request, inasmuch as the rule quoted requires that such sales be made at only one location. It is apparent that the effect of the regulations quoted have the effect of requiring retail vendors of fish to obtain the permit provided for therein even though such fish have been lawfully acquired from sources outside the state of Missouri.

The question that then presents itself is the authority of the conservation commission to promulgate such a regulation. In this regard we direct your attention to Section 252.030, RSMo 1949, reading as follows:

"The ownership of and title to all wild life of and within the state, whether resident, migratory or imported,

Honorable William J. Geekie

dead or alive, are hereby declared to be in the state of Missouri. Any person who fails to comply with or who violates this law or any such rules and regulations shall not acquire or enforce any title, ownership or possessory right in any such wild life; and any person who pursues, takes, kills, possesses or disposes of any such wild life or attempts to do so, shall be deemed to consent that the title of said wild life shall be and remain in the state of Missouri, for the purpose of control, management, restoration, conservation and regulation thereof." (Emphasis ours.)

Also Section 252.040, RSMo 1949, reading as follows:

"No wild life shall be pursued, taken, killed, possessed or disposed of except in the manner, to the extent and at the time or times permitted by such rules and regulations; and any pursuit, taking, killing, possession or disposition thereof, except as permitted by such rules and regulations, are hereby prohibited. Any person violating this section shall be guilty of a misdemeanor." (Emphasis ours.)

Also to the provisions of Section 252.190, RSMo 1949, reading as follows:

"Any person who shall have in his possession or under his control any wild life, except in the manner, to the extent and at the time or times permitted by the provisions of this chapter and the rules and regulations of the commission, shall be deemed guilty of a misdemeanor; and any agent of the commission, and any sheriff or marshal or deputy thereof is hereby permitted and authorized to take and confiscate any such wild life from any person so possessing or controlling the same." (Emphasis ours.)

Honorable William J. Geekie

Certain definitions appearing in Section 252.020, RSMo 1949, are pertinent to the subject matter of your inquiry and we quote therefrom:

"As used in this chapter, unless the context otherwise requires:

"(1) The word 'commission' shall mean and include the conservation commission as established by the Constitution of Missouri; and the words 'rules and regulations' shall mean those made by said commission pursuant thereto;

\* \* \*

"(3) The words 'wild life' shall mean and include all wild birds, mammals, fish and other aquatic and amphibious forms, and all other wild animals, regardless of classification, whether resident, migratory or imported, protected or unprotected, dead or alive; and shall extend to and include any and every part of any individual species of wild life." (Emphasis ours and theirs.)

Under the statutory enactments quoted it is readily apparent that the state of Missouri has sought to extend its ownership or control of wildlife not only to that found or reduced to possession within this state, but also to that which may be imported hereto. It is fundamental that statutory enactments of the General Assembly are entitled to the presumption of validity and that absent a clearly unconstitutional or otherwise improper exercise of the general plenary power granted to such body, they will be upheld.

As a matter of fact Section 252.040, RSMo 1949, as it appeared in prior revisions in substantially the same form as now, has been held to be not invalid as a law impairing the obligation of contracts, as not being invalid by virtue of being retrospective in operation, and as not being invalid in authorizing the taking of private property for public use without just compensation. See *State v. Heger*, 93 S. W.

Honorable William J. Geekie

252, 194 Mo. 707, l.c. 716. In that case the right of the state to prohibit the sale of game whether taken lawfully or unlawfully within or without the state was upheld. See quote from the case mentioned:

"This prosecution is under section 18 of the game law, which provides that: 'Any person, firm or corporation who shall at any time of the year barter, sell or offer for sale, in this State, either under the name used in this section or under any other name or guise whatever, any of the birds, game or fish protected in this act, whether taken within or without this State, or lawfully or unlawfully taken, shall be punished by a fine of not less than \$50 nor more than \$100 and cost of prosecution, and an additional fine of \$5 for every bird, fish, animal or part of every bird, fish or animal sold or offered for sale.'

"That this section of the act is not in conflict with any provision of either the State or Federal Constitution is clearly shown by the authorities cited. Whether there is any other provision or section of this act invalid, because in conflict with the Constitution, we do not undertake to say, but even if there were, that would not affect the validity of said section 18.\* \* \*"

#### CONCLUSION

In the premises we are of the opinion that the Conservation Commission of Missouri may lawfully require that persons engaged in the retail merchandising of fish be required to obtain a permit from such Commission even

Honorable William J. Geekie

though such fish may have been lawfully acquired from sources outside the state of Missouri.

In this opinion we have discussed only the laws and regulations applicable to retail merchandising, as we construe your letter of inquiry to relate solely to that phase of the matter.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON  
Attorney General

WFB:vlw