

ANIMALS: : Captive minks kept by a private in-
PERSONAL PROPERTY: : dividual for commercial purposes are
TAXATION: : taxable property.
CONSERVATION COMMISSION:.....
WILDLIFE:

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15

March 22, 1955

Honorable John R. Caslavka
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Mr. Caslavka:

Your letter of March 15, 1955, requesting an opinion of this office, reads, in part, as follows:

"A certain individual in Dade County, Missouri, for the past several years has engaged in the occupation of rearing mink for commercial purposes. When the tax assessor attempted to place them on the tax list he objected stating that the title to these wild life was vested in the State of Missouri under and by virtue of Section 252.030 VAMS, 1949. The position of this office is that even though the title to all wild life may be vested in the State of Missouri, and certainly the rearing of these mink is under the supervision and control of the State Conservation Commission, they are still subject to a tangible personal property tax in the county in which the individual resides."

Tax liability on owners of real and tangible personal property is established by Section 137.075, RSMo 1949. That section provides:

"Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Section 252.030, RSMo 1949, provides:

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

Formerly there was no property right in wild animals until captured. Wild animals became the property of the person capturing and taming them, and were the property of the captor so long as he kept control of them, even though they were never tamed. State vs. Weber, 205 Mo. 36, 45, 46, 102 S.W. 955.

Section 252.030 does not mean that a private person can have no property rights in wildlife. In our view, the placing of title of wildlife in the State was for the purpose of regulation of the taking, and conservation, of wild animals.

The implication of Section 252.030 is that a person lawfully acquiring possession of wildlife becomes the owner thereof, subject only to the superior right of the State to make regulations concerning such wildlife after lawful obtention of possession by a private person. Thus, it was stated in State vs. Taylor, 358 Mo. 279, 214 S.W. (2d) 34, 36:

"We agree with appellant that 'title to fish reduced to one's possession by lawful means is released by the State to the taker,' * * *."

And in State vs. Freeland, 300 S.W. 675, 676, it is said:

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"* * * It is plain from the statutes that the state has asserted title to fish for the public good, releasing title, however, at certain and proper designated seasons to such of the public as through effort and skill and by lawful means and manner reduce the fish to actual possession, * * *."

We note that it is lawful, upon compliance with certain regulations, to hold wildlife in captivity for purposes of propagation. This is permitted by Section 51, Wildlife Code of Missouri (January 1, 1955 Revision). That section reads:

"Wildlife may be propagated and held in captivity by the holder of a wildlife breeder's permit, as provided herein. Such permits may be granted after satisfactory proof by the applicant that all such wildlife was secured from a source other than the wild stock in this state, and that the applicant is equipped to confine such wildlife for public safety and to prevent wildlife of the state from becoming a part of the enterprise; but such proof may be waived in the renewal of any such permits. Wildlife so propagated and held may be used, sold, given away, transported or shipped at any time, but the same shall be accompanied by a written statement by the permittee giving his permit number and showing truly the kind and number of each species sold, given away, transported or shipped, the name and address of the recipient, and that as to the same he has fully complied with this code. Wildlife propagated in captivity or transported into this state may be liberated to the wild only under the specific permission and supervision of the Commission. The operation of any such enterprise in violation of this code or in any manner as a

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cloak or guise to nullify or make difficult the enforcement of this code shall be cause for the suspension or revocation of such permit."

The above section, promulgated by the Conservation Commission by authority of Article IV, Section 45, Constitution of Missouri, 1945, giving to authorized holders of wildlife the right to use, sell, give away, transport, or ship the wildlife held by them, grants to such authorized holders complete ownership against the world, excepting the right of the State to make reasonable regulations concerning such wildlife.

CONCLUSION

In the premises, therefore, it is the opinion of this office that captive minks kept by a private individual for commercial purposes are taxable property.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

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