

Answered by letter-Wieler

April 23, 1969

OPINION LETTER NO. 71

Honorable George J. Pruneau
Prosecuting Attorney
Wayne County
Court House
Greenville, Missouri 63944



Dear Mr. Pruneau:

This is in response to your request for an opinion from this office as to the applicability of Section 564.480, RSMo 1967 Supp. to lands owned by the United States Government, specifically Clark National Forest.

Section 564.480 provides:

"1. No person shall throw or place, or cause to be thrown or placed, any glass, glass bottles, wire, nails, tacks, hedge, cans, garbage, trash, refuse, or rubbish of any kind, nature, or description on the right of way of any public road or state highway or on the navigable waters of this state or on the banks of any navigable stream, or on any land or water owned, operated or leased by the state, any board, department, agency or commission thereof, or any political subdivision thereof.

"2. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not less than twenty-five dollars nor more than five hundred dollars or by confinement in the county jail for a term not to exceed one

Honorable George J. Pruneau

year or by both such fine and confinement.

"3. Any peace officer of this state and its subdivisions shall and any agent of the conservation commission or deputy or employee of boat commission may enforce the provisions of this section and arrest violators thereof; except that conservation agents and deputy boat commissioners may enforce these provisions only upon the water, the banks thereof or upon public land."

It is our view that the term "public land" as used in the third subsection of Section 564.480 refers to those enumerated categories in subsection one. Therefore, this statute only refers to littering on the right of way of any public road or state highway, any navigable stream or bank thereof, or any land or water owned, operated or leased by the state or any subdivision thereof.

However, it is our opinion that Section 564.480 can be enforced upon the above enumerated areas within the Forest itself. Clark National Forest was acquired by the federal government during the period 1934 to 1962. See Inventory Report on Jurisdictional Status of Federal Areas Within the States, General Service Administration, June 30, 1962. Consent to these purchases has been given by the state in Section 12.010, RSMo 1959. Also, in Section 12.020, RSMo 1959, the state purports to grant and cede jurisdiction over these lands to the United States reserving to the state authority to serve and execute civil and criminal process issued under authority of the state. But it has been said that this ceding of exclusive jurisdiction is effective only to the extent that the federal government accepts it. See Attorney General Opinion No. 9, issued to Governor Blair on March 6, 1957 (copy enclosed). The intent of the federal government in this matter is very clear. 16 U.S.C.A., Section 480 provides:

"The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment, thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State. * * *"

By this enactment, Congress has declined in effect to accept exclusive jurisdiction over forest reserve lands. In the case of *Wilson v. Cook*, 327 U.S. 474, the Supreme Court of the United States said l.c. 486 and 487:

Honorable George J. Pruneau

"Section 12 of the federal statute, authorizing the purchase, provided: 'That the jurisdiction, both civil and criminal, over persons upon the lands acquired under this Act shall not be affected or changed by their permanent reservation . . . as national forest lands, except so far as the punishment of offenses against the United States is concerned, the intent and meaning of this section being that the State wherein such land is situated, shall not, by reason of such reservation and administration, lose its jurisdiction nor the inhabitants thereof their rights and privileges as citizens or be absolved from their duties as citizens of the State.'

"By this enactment Congress in effect has declined to accept exclusive legislative jurisdiction over forest reserve lands, and expressly provided that the state shall not lose its jurisdiction in this respect nor the inhabitants 'be absolved from their duties as citizens of the State.' . . ."

Therefore, it is our opinion that Section 564.480, RSMo 1967 Supp. does apply to public roads or state highways, navigable waters and the banks thereof, and lands or waters owned, operated, or leased by the state or any subdivision thereof within the Clark National Forest.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 9
3-6-57, Blair