

CONSERVATION COMMISSION:  
ARRESTS:  
TRESPASS:

1. In order for information obtained from an alleged violator of conservation rules during "custodial interrogation" to be used against that person

to support a conviction, the accused must first be informed of his Fifth Amendment rights in accordance with the guidelines set forth by the United States Supreme Court in the Miranda case. 2. A conservation agent acting in the performance of his duties will not be guilty of trespass by reason of his entering the lands of private persons; an agent is "within the performance of his duties" in entering the lands of private persons only if he has reason to suspect violation of fish and game laws. 3. A person accused of a game violation is not necessarily entitled to a written summons or complaint at that immediate time. 4. A person is not required to produce identification other than the production of a fishing or hunting license to an agent of the Conservation Commission.

September 30, 1970

OPINION NO. 46

Honorable Ray S. James  
Representative - 5th District  
6421 Brookside Road  
Kansas City, Missouri 64113



Dear Representative James:

This letter is in response to your request for an opinion of this office concerning the rights and duties of conservation agents and alleged violators of conservation laws.

This request asks the following questions;

1. "Must violators of the rules of the Conservation Commission be accorded the rights of defendant and be advised of their rights before interrogation by conservation officers?"

You also inquire:

"Is not one accused by a conservation agent entitled to the same rights and privileges as any citizen, i.e., Miranda warning?"

2. "Does a conservation agent have 'an inherent right to trespass at times other than when he

has personally observed a misdeameanor (sic)?"

3. "Following an arrest for a game violation, is not the accused entitled to a written summons and/or complaint at that immediate time?"

4. "Is there statutory, or any other, authority for a conservation agent to demand a hunter's identification beyond the production of a hunting or fishing license?"

1.

"Must violators of the rules of the Conservation Commission be accorded the rights of defendant and be advised of their rights before interrogation by conservation officers?"

Rules of the Conservation Commission are accorded the weight and force of statutes, and any person violating any of such rules and regulations relating to wildlife shall be guilty of a misdemeanor by virtue of Section 252.230, RSMo 1969. The question you present is, then, does the requirement set forth by the United States Supreme Court in the decision of *Miranda v. Arizona*, 384 U.S.436, require that a person who commits a misdemeanor be informed of his rights before interrogation by conservation agents.

An analysis of the decision in the *Miranda* case reveals that the critical point in time at which the accused must be advised of his rights is when "custodial interrogation begins." Although determination as to the inception of "custodial interrogation" can be made only upon the facts and circumstances of a particular case, it is sufficient for our purpose to define "custodial interrogation" as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. *Miranda v. Arizona*, supra.

Under *Miranda*, police authorities are required to follow scrupulously each and all of the four specific procedural safeguards or rights the court delineates as Fifth Amendment rights of an individual in custody or otherwise deprived of his freedom. The specific warning requires that the individual be informed that: (1) He has the right to remain silent. (2) Anything he says can and will be used against him in a court of law. (3) He has the right to talk to a lawyer and have the lawyer present with him while he is being questioned. (4) If he cannot afford to hire a lawyer, one will be appointed to represent him before any questioning, if he wishes one.

To insure the enforcement of these rights, the court further said:

" . . . But unless and until such warnings  
. . . are demonstrated by the prosecution at

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trial, no evidence obtained as a result of interrogation can be used against him." Miranda v. Arizona, supra, l.c.479.

Failure to give the specific warnings does not exonerate the violator, but does compel the exclusion of any information obtained during "custodial interrogation" at the trial of the accused.

The Fifth Amendment privilege against self-incrimination is protected under the Fourteenth Amendment against abridgement by the states. Malloy v. Hogan, 1964, 378 U.S.1. The Supreme Court of the United States has not limited this constitutional right in regard to the grade of the offense or the degree of punishment, and it is logical to assume that this right would apply to those accused of misdemeanors as well as felonies.

The Supreme Court of Missouri has made the following observations:

" . . . we do not readily see why the requisites of due process should vary according to the severity of the permissible punishment. . . . " State v. Glenn, 317 S.W.2d 403,407.

" . . . we see no readily apparent reason why the minimum standard for due process of law should depend upon the permissible punishment. . . . " State v. Warren, 321 S.W.2d 705,709.

The question of whether a conservation agent is a "peace officer" has been resolved in the affirmative by this office in Attorney General Opinion No. 189, 1966, issued to Harold S. Hutchinson, copy enclosed.

The duties imposed upon a conservation agent by law are (Section 252.080, RSMo 1969) that he shall arrest:

" . . . any person caught by him or in his view violating or who he has good reason to believe is violating, or has violated this law or any such rules and regulations , and take such person forthwith before a magistrate or any court having jurisdiction, who shall proceed without delay to hear, try and determine the matter as in other criminal cases."

Also under Section 252.080, RSMo 1969, conservation agents are given the same power to serve criminal process as sheriffs and marshalls in connection with violations of the conservation laws.

It is our opinion, therefore, that in order for information obtained from an alleged violator of conservation rules during "custodial interrogation" to be used against that person to support a conviction, the accused must first be informed of his Fifth Amendment

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rights in accordance with the guidelines set forth by the United States Supreme Court in the Miranda case.

2.

"Does a conservation agent have 'an inherent right' to trespass at times other than when he has personally observed a misdemeanor?"

A conservation agent has no "inherent right" to trespass as such, but he is given the same powers as other law enforcement authorities insofar as he is within the scope of performance of his duties relating to the enforcement of conservation laws. The law is well settled that an officer of the law, acting in the performance of his duties, will not be guilty of trespass by reason of his entering the lands of private persons (52 Am.Jur., Trespass, Section 41, P.868; 87 C.J.S., Trespass, Section 54, Page 1006). See Attorney General Opinion No. 87, Swenson, March 21, 1949, copy enclosed. He may, of course, become guilty of trespass by acting in excess of his authority. The question now presented is "when is a conservation agent acting in the performance of his duties?" Can an agent of the Conservation Commission go onto private lands as a matter of course, or must he have reason to suspect a violation of the laws he is employed to enforce?

It is the opinion of this office that an agent is "within the performance of his duties" in entering the lands of private persons only if he has reason to suspect a violation of fish and game laws. Agents of the Conservation Commission are the persons primarily charged with the duty of enforcing the statutory laws relating to fish and game and the rules and regulations of the Conservation Commission relating thereto. Section 252.100, RSMo 1969, authorizes them to make complaints and cause proceedings to be commenced against any person for the violation of fish and game laws; to search without a warrant any creel, container, game bag, hunting coat or boat in which he has reason to believe wildlife is being unlawfully possessed or concealed; and, upon the issuance of a search warrant, to enter and search an occupied building and outbuildings immediately adjacent thereto, cold storage locker plants, motor vehicle, or sealed freight or express car for such purposes and then only in the daytime. It is further provided that interfering with such agent's activity in this regard constitutes a misdemeanor. Section 252.080, RSMo, authorizes an agent to serve criminal process in cases of violation of fish and game laws, and to arrest without a warrant "any person caught by him or in his view violating or who he has good reason to believe is violating, or has violated this law or any such rules and regulations."

We believe that an agent would be within the performance of his duty if he were engaged in any of the activity referred to in the above paragraph. There is no requirement that a search warrant be obtained prior to his entering an open field while carrying out the above duties. Numerous cases have upheld the right of other law enforcement officers to search such premises without a warrant in the enforcement of liquor laws (State v. Cobb, 309 Mo.89, 273 S.W.736; State v. Dailey, 280 S.W.1044, Ann.74 A.L.R.1454). There would appear

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to be no reason for applying a different rule to officers enforcing fish and game laws. However, in the above referenced cases, the law enforcement officer had reason to suspect a violation of the laws. It seems to us an entirely different situation where an officer has no reason to suspect a violation when he enters the private lands of another. This type of activity seems to be a type of administrative regulation, and there is no expressed statutory authority for agents to engage in this type of regulation in relation to fish and game laws.

On the question of a search over land, without a warrant, we must predicate our approach upon the terms of the Fourth Amendment and the Fourteenth Amendment of the United States Constitution (which makes the fourth application to states), and Article I, Section 15, of the Missouri Constitution, 1945. Comparison of the Fourth Amendment and Article I, Section 15, reveals that they are virtually identical in pertinent parts. In *Mapp v. Ohio*, 367 U.S.643, 81 S.Ct.1684, 6 L.Ed.2d 1081 (1961), the United States Supreme Court held that the exclusionary rules governing evidence obtained by searches and seizures in violation of the Fourth Amendment to the United States Constitution, was applied to the state through the due process clause of the Fourteenth Amendment. Thus, the Supreme Court held that the evidence illegally seized by a state officer is inadmissible in a state criminal trial, just as it is in a federal criminal trial. See Annotation in 6 L.Ed.2d 1544.

The United States Supreme Court in *Ker v. California*, 374 U.S. 23, 83 S.Ct.1623, 10 L.Ed 2d 726, elaborated further on the Fourth Amendment and stated that while states were not precluded from developing their own rules governing searches and seizures, they must at all times remain within the federal constitutional guarantee.

Inasmuch as the operation of the Conservation Commission is administrative in nature and constitutional in origin, we note that the United States Supreme Court in *Camara v. Municipal Court of San Francisco*, 387 U.S.523, 87 S.Ct.1727, 18 L.Ed.2d 930, and *See v. City of Seattle*, 387 U.S.541, 87 S.Ct.1737, 18 L.Ed.2d 943, held that warrants were necessary in searches of an administrative character, which we think is pertinent here. The *Camara* case involved a housing inspector who attempted to enter appellant's building for inspection purposes pursuant to authority of the San Francisco Housing Code. The *See* case involved an inspection under the Fire Inspection Ordinance. We note parenthetically they did not declare administrative searches invalid, but merely that they be made in accordance with existing law. Since the legislature has not expressly authorized conservation agents to enter private lands for purposes of enforcing administrative regulations of fish and game laws when there is no reason to suspect violation, we do not believe such agents possess such authority under existing law.

In several instances, the legislature has granted statutory authority to enter the private lands of another. Section 277.120(13), RSMo 1969, provides:

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" . . . The state highway commission also shall have the same authority to enter upon private lands to survey and determine the most advantageous route of any state highway as granted, under section 388.210, RSMo, to railroad corporations."

Section 388.210, RSMo 1969, referred to in the foregoing statute, reads, in part:

"Every corporation formed under this chapter shall, in addition to the powers herein conferred, have power:

"(1) To cause such examination and survey for its proposed railroad to be made as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, to enter upon the lands or waters of any person; but such corporation shall be liable and subject to responsibility for all damages which shall be done thereto;"

The legislature, by virtue of Section 254.250, RSMo 1969, has given conservation agents express authority to enter upon any lands at any time for the purpose of carrying out the provisions of Chapter 254, the State Forestry Law. It seems to us that had the legislature intended to give agents the same powers in respect to fish and game laws, it would have done so.

The Missouri Supreme Court has defined trespass as every unauthorized entry, regardless of degree of force used, even if no damage is done, or the injury is slight. *Mawson v. Vess Beverage Co.*, 173 S.W.2d 606 (Mo.1943).

Section 560.445, RSMo 1969, provides that wilful entry upon the enclosed premises of another, when the owner of such premises has posted plainly written signs or warnings, is deemed a misdemeanor. That a conservation agent is acting in performance of his duty because he has reason to suspect a violation of fish and game laws would be a defense to an action in either civil or criminal trespass.

In conclusion, it is the opinion of this office that unless a conservation agent has reason to suspect a violation of the conservation laws, he is not "within the performance of his duty" as to make him immune from trespass when he enters the private lands of another.

3.

"Following an arrest for a game violation, is not the accused entitled to a written summons and/or complaint at that immediate time?"

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An arrest for violation of the Fish and Game Statute or rules and regulations relating thereto may be made in either of two ways, with or without a warrant.

The procedure for an arrest with a warrant is set forth in Supreme Court Rules 21.03 through 21.06, derived from Sections 543.020, 543.030 and 543.050, RSMo 1969. These rules provide that the prosecuting attorney of a county in which an offense may be prosecuted may make an information charging the commission of a misdemeanor either upon his own knowledge or upon the basis of a complaint previously submitted to him. Such information is to be filed in any court having jurisdiction to try the offense charged. Upon the filing of an information charging the commission of a misdemeanor, a warrant for the arrest of the defendant shall be issued. If, however, there is reasonable ground, in the discretion of the judge, magistrate or prosecuting attorney as the case may be, to believe that the defendant will appear upon a summons, a summons shall be issued instead of a warrant of arrest. The summons shall describe the offense charged in the information and shall command the defendant to appear at a stated time and place in answer thereto. If the defendant shall fail to appear as commanded by the summons, a warrant of arrest shall be issued.

In addition to the above procedure, the Rules provide that a complaint of the commission of a misdemeanor, verified by oath or affirmation, may be filed with the magistrate having jurisdiction of the offense and if the magistrate is satisfied that the accused is about to escape, or has no known place of permanent residence or property in the county likely to restrain him from leaving for the offense charged, he shall immediately issue a warrant and have the accused arrested and held until the prosecuting attorney shall have time to file an information. Any warrant issued upon a complaint or information charging the commission of a misdemeanor shall describe the offense charged. The warrant shall be executed by the arrest of the accused. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the accused as soon as possible. Section 532.630, RSMo 1969, provides that failure to give a prisoner a copy of the process within six hours is a misdemeanor and that the person committing said misdemeanor shall also forfeit to the party aggrieved five hundred dollars.

In addition to the above procedures, a conservation agent is given the power of arrest without warrant under certain conditions by virtue of Section 252.080, RSMo 1969, which states so far as is pertinent that:

" . . . Any such agent may arrest, without warrant, any person caught by him or in his view violating or who he has good reason to believe is violating, or has violated this law or any such rules and regulations, and take such person forthwith before a magistrate or any court having jurisdiction, who shall proceed without delay to hear, try and determine the matter as in other criminal cases."

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The specified conditions are generally the same conditions under which any officer may arrest without warrant; that is, when probable cause exists. Section 544.170, RSMo 1969, specifies the maximum time which a person can be held without a warrant as 20 hours:

"All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense; and every such person shall, while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor."

It may be well to note here that the "courtesy summons" often issued at the time a conservation agent observes what he believes to be a violation does not constitute an arrest. Generally, if a person fails to appear at the time and place specified in the "courtesy summons", a complaint is filed and a warrant is issued as described above.

For the reasons noted in the above explanation of the two methods of arrest, it is the opinion of this office that a person accused of a game violation is not entitled to a written summons or complaint at that immediate time.

4.

"Is there statutory, or any other, authority for a conservation agent to demand a hunter's identification beyond the production of a hunting or fishing license?"

The only identification which the fish and game law requires to be exhibited upon demand is the license or permit to hunt or fish. Section 252.060, RSMo 1969, states:

"It is hereby declared to be the duty of every person holding a license or permit issued pur-

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suant to any such rules and regulations to submit the same for inspection by any agent of the commission, or by any sheriff, marshal or constable or any deputy thereof. Any person holding such license or permit and refusing to submit the same when a proper demand is made therefor shall be deemed guilty of a misdemeanor."

This statute provides that the demand may be made by certain persons other than agents of the commission, and Section 252.070, RSMo 1969, expressly states that it is the duty of these other persons to enforce the fish and game laws.

It may be noted that Section 302.181, RSMo 1969, requires the holder of a driver's license, upon demand, to exhibit it to "any officer of the highway patrol, or any police officer or peace officer, or any other duly authorized person." (Emphasis added). If "any other duly authorized person" includes conservation agents, then it would appear that there is some basis for requiring identification beyond the hunting or fishing license. This section seems to be limited, however, to persons driving a motor vehicle. Therefore, if a conservation agent qualified as "any other duly authorized person", he could require production of the driver's license if the person were driving an automobile but not if he stopped him in the field. In addition, we feel that it is questionable that an agent of the Conservation Commission would qualify as a duly authorized person in light of the fact that the legislature, by virtue of Section 252.080, RSMo 1969, which gives agents the same power as sheriffs and marshals "only in such cases as are violations of this law and rules and regulations of the commission". We can dispose of the question without answering it by assuming that your question does not involve a person who is operating a motor vehicle.

For the reason that there is little or no case law relating to the statute requiring production of a fishing or hunting license other than to uphold its constitutional validity (see State v. Bennett, 288 S.W.50 (Mo.1926), it may be helpful to examine the prevailing law relating to drivers' licenses since the two types of statutes are similar in nature.

The prevailing case law relating to statutes requiring the display upon demand of a driver's license indicates that authorization to demand production of such identification is limited to acts connected with the enforcement of motor vehicle laws, and that to demand production of such identification for any other reason is unauthorized as it would be the equivalent of obtaining information by subterfuge (See 60 C.J.S., Motor Vehicles, Section 157, page 808).

We can see no reason why this rule would not also apply to the statute requiring display upon demand of a hunting or fishing license.

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There is case law in other states holding that a traffic officer is not authorized to demand production of a driver's license if all he wants to know is who a person is, where he is going, and where he has been, because such information was not related to the licensing requirement. See 61A,C.J.S.,Motor Vehicles, Section 593(2),page 284; People v. Harr, 235 N.E.2d 1 (Ill.1968).

We can find no authority to the proposition that a law enforcement official is authorized to demand the production of identification of any form when no specific statute exists giving him such authority. To the contrary, there is case law to the effect that a person has a right to refuse to identify himself to an officer and was guilty of no offense in doing so when no statute existed making such action an offense. See 61A,C.J.S.,Motor Vehicles,Section 652,page 447; People v. Grange, 190 N.Y.S.573 (1921).

Further, it has been held that where a statute requires a person to produce a certain type of identification but sets no penalty for the refusal to do so, then it is not a criminal offense to refuse to do so and, therefore, cannot be punished for his action. See State v. Farren, 140 Ohio St.473, 45 N.E.2d 413,143 A.L.R.1016 (1942). It may be noted here that violation of either Missouri statute requiring the display upon demand of a license is deemed by statute to be a misdemeanor.

It is, therefore, the conclusion of this office that a person is not required to produce identification other than the production of a fishing or hunting license to an agent of the Conservation Commission.

This conclusion does not, of course, preclude a conservation agent from making a reasonable effort to ascertain the identity of any person he suspects to be violating the fish and game laws, or to arrest anyone who he suspects to possess a fishing or hunting permit other than his own in violation of Rule 2.15 of the Wildlife Code of Missouri.

For your information, a copy of the Fish and Game Statute, the Wildlife Code, and Attorney General Opinion No. 464, issued to Ralph B. Nevins, December 6, 1963, are enclosed.

#### CONCLUSION

For the foregoing reasons, it is the opinion of this office that:

1. In order for information obtained from an alleged violator of conservation rules during "custodial interrogation" to be used against that person to support a conviction, the accused must first be informed of his Fifth Amendment rights in accordance with the guidelines set forth by the United States Supreme Court in the Miranda case.

2. A conservation agent acting in the performance of his duties will not be guilty of trespass by reason of his entering the lands of private persons; an agent is "within the performance of his duties" in

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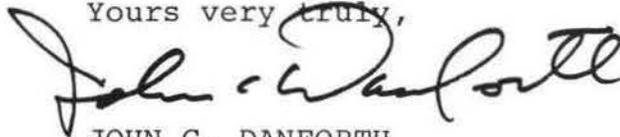
entering the lands of private persons only if he has reason to suspect a violation of fish and game laws.

3. A person accused of a game violation is not necessarily entitled to a written summons or complaint at that immediate time.

4. A person is not required to produce identification other than the production of a fishing or hunting license to an agent of the Conservation Commission.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General

Enclosures:

OP.189-1966-Hutchinson  
OP 87 -1949-Swenson  
OP 464-1963-Nevins  
Fish & Game Statute  
Wildlife Code