FISH AND GAME: Prosecutions under chapter 43 Revised Statutes of Missouri, 1929, must be commenced within one year from date of violation.

April 5, 1938

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Mr. Leo Politte,
Prosecuting Attorney,
Franklin County,
Union, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated April 1, 1938, for an official opinion, which is as follows:

> "May a prosecution be instituted under Section 8236, Laws of Missouri, 1931, page 227 for felonious killing of a deer more than one year after the offense is alleged to have been committed, or does Section 8293 R.S. Mo., 1929, bar prosecution for felonious killing of deer after one years' time has expired.
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> Affidavit for information under Section 8236 has been filed against a defendant for feloniously killing a deer in 1936, but the Justice of the Peace refuses to bind the defendant over for trial in the Circuit Court until I obtain an opinion from your office on the above question. I would like to have an opinion on this question as early as possible because several prosecutions are waiting a decision in this matter."

Section 8236, Article II, chapter 43 of the Revised Statutes of 1929, was repealed in the Session Laws of Missouri, 1931, page 227, but was given the same section number as set

out in the Revised Statutes of Missouri, 1929, and is still a part of chapter 43, Article II of the Revised Statutes of Missouri, 1929. This section declared it unlawful to hunt for, or to kill or attempt to kill any deer, etc., and provided as a punishment at imprisonment in the state penitentiary for a term not exceeding two years, or by imprisonment in the county jail not less than thirty days, or by a fine of not less than one hundred dollars ($100.00), or more than five hundred dollars ($500.00), or by both such fine and imprisonment.

Under the general law of limitations of actions, the violation of this act could be prosecuted by commencement at any time within three years from the time of the violation, but under Section 8293, Article II, chapter 43 of the Revised Statutes of Missouri, 1929, the limitation has been reduced to the filing within one year. Section 8293 reads as follows:

> "Limitation of prosecution.--Prosecutions under this chapter may be commenced within one year from date of violation of any provision of this chapter, either by indictment, complaint or information."

The word "may" as used in this section is mandatory and is used interchangeably with the words "shall" and "must". In the case of Kansas City, Missouri v. J. I. Case Threshing Machine Co., 87 S.W. (2d) 195, l.c. 205; 337 Mo. 913, the Court held:

> "The words 'must, may, and shall' are constantly used interchangeably in statutes and without regard to their literal meaning; and in each case are to be given that effect which is necessary to carry out the intention of the Legislature as determined by ordinary rules of construction. 59 C. J. 1081, Section 635; 25 R. C. L. 768, Section 12; 2 Lewis- Sutherland (2d Ed.) 1153, Section 640; Maxwell on Interpretation of Statutes (5th Ed.) 389; Endlich on Interpretation of Stat-

> utes, 416-419, Sections 306, 307. 'A mandatory construction will usually be given to the word 'may" where public interests are concerned and the public or third persons have a claim de jure that the power conferred should be exercised or whenever something is directed to be done for the sake of justice or the public good.'"* * * * * * * * *

As noted, Section 8293 limits the prosecution of all the violations under chapter 43 Revised Statutes of Missouri, 1929 in that it requires the commencement of the violation of any provision of this chapter to be commenced within one year while the ordinary limitations of a felony which is set out in Section 8236, Session Laws of 1931, page 927, is that the prosecution must be commenced within three years after the commission of such offense. This limitation is governed by Section 3392, Article 2, chapter 29 of the Revised Statutes of Missouri, 1929, which reads as follows:

> "Indictments or informations required in three and five years, in what cases.--No person shall be tried, prosecuted or punished for any felony, other than as specified in the next preceding section, unless an indictment be found or information be filed for such offense within three years after the commission of such offense, except indictment or informations for bribery or for corruption in office may be prosecuted if found or filed within five years after the commission of the offense."

Section 3393, Article 2, chapter 29, R.S. Mo. 1929, reads as follows:

> "When in one year.--No person shall be prosecuted, tried or punished for any offense, other than felony, or for any fine or forfeiture, unless the

> indictment be found or prosecution be instituted within one year after the commission of the offense, or incurring the fine or forfeiture."

Also Section 3399, Article 2, chapter 29, R.S. Mo. 1929, reads as follows:

> "Preceding sections construed.-- The preceding sections of this article shall not apply to any bill, complaint, information, indictment or action, which is or shall be limited by any statute to be brought, had, commenced or prosecuted within a shorter or longer time than is prescribed in said sections; but such bill, complaint, information, indictment or other suit shall be brought and prosecuted within the time limited by such statute."

Under this section any statute can be enacted which would limit the commencement for prosecution within a shorter or longer time than is prescribed in the general law. Sections 3392 and 3393, supra, cover the limitation of action under the general law. Section 8293, R.S. Mo. 1929 has made the limitation shorter than is usually set out in the general law. This section applies to all violations under Article 2, chapter 43 of the Laws of Missouri, 1929.

Section 8293, supra, is not ambiguous and plainly states that the action must be commenced within one year from the date of the violation of any provisions of chapter 43. In the case of O'Malley v. Continental Life Insurance Company, 75 S. W. (2d) 837 l.c. 839; 335 Mo. 1115, the Court held:

> "The legislative intent in the enactment of the law is to be sought and effectuated. This is the rule of first importance in statutory interpretation. To ascertain such intent we invoke as aids such of the auxiliary rules of interpretation as may seem to bear with incidence as

> direct as may be upon the matter in hand. Briefly stated, these in substance recognize and require that the language of the act be considered (25 R.C.L., Section 216, p. 961); that each word be accorded its ordinary meaning, generally speaking; and that in construing a word or expression of a statute susceptible of two or more meanings the court will adopt that interpretation most in accord with the manifest purpose of the statute as gathered from the context (Id., Section 237, p. 994)."

In the case of State ex rel. Cobb v. Thompson, State Auditor, 5 S. W. (2d) 57, the Court stated:

> "'A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.'"
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> "'If the words (of the statute) are free from ambiguity and doubt and express plainly, clearly and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation. The statute itself furnishes the best means of its own exposition; and if the sense in which words were intended to be used can

> be clearly ascertained from its parts and provisions, the intention thus indicated will prevail without resorting to other means of aiding in the construction.' Lewis-Sutherland Stat. Const. vol. 2 (2d Ed.) p. 698."

In the case of Dahlin v. Missouri Commission for the Blind, 262 S.W. 420, l.c. 423, the Court said:

> "A statute that is clear in its terms, and leaves no room for construction must be enforced as written but if it not clear, and there is any room for construction, then the reason and sense of the statute will control in determining its meaning."

The Legislature, in passing Section 8293, R.S. Mo. 1929, should have been aware that most felonies came within the statute of limitation of three years, and most misdemeanors came within the statute of limitation of one year, and by passing Section 8293, it was the intent of the Legislature that on actions under chapter 43 should be commenced within one year from the date of the violation.

The general law in respect to felonies, as stated before, relates that the commencement of the action must be commenced within three years from the date of the violation, but the special law as set out in Section 8293 sets out that under chapter 43, the commencement of the action must be commenced within one year from the date of the violation. In the case of State v. Harris, 87 S.W. (2d) 1026, l.c. 1029; 337 Mo. 1052, the Court said:

> "'Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary

> repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.'"

In the case of State ex rel. v. Brown, 68 S.W. (2d) 55, l.c. 59; 334 Mo. 78, the Court said:

> "* * * * In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' Tevis et al. v. Foley, 325 Mo. 1050, 1054, 30 S.W. (2d) 68, 69; State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 626, 247 S.W. 129; State ex inf. Barrett v. Imhoff, 291 Mo. 603, 617, 238 S.W. 122. If there be any repugnancy between these two statutes, the general statute, section 4556, must yield to the special

statute, section 5613."

In the case of Tevis et al. v. Foley, 30 S.W. (2d) 68, l.c. 69; 325 Mo. 1050, the Court said:

> "* * * * In this situation the rule of construction is that, 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute."* * * * * *

Betz v. Kansas City Southern Railway Company, 284 S.W. 455, l.c. 462; 337 Mo. 913, the Court said:

> "Judge Ragland, speaking for this court in banc in Grier v. Railway Co., 286 Mo. loc. cit. 534, 228 S.W. 457, reviewing the selfsame statute, recognized the well-settled rule when he said:
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> 'The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used. All other rules are incidental and mere aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill. In such case there is no room for construction.'"

CONCLUSION

In view of the above authorities, it is the opinion of this department that a prosecution cannot be instituted or commenced under Section 8236, Laws of Missouri, 1931, page 227, for the felonious killing of a deer more than one year after the offense is alleged to have been committed. Section 8293, R.S. Mo. 1929 provides for imprisonment in the state penitentiary and thereby desnigates the crime as a felony, but is not governed by Section 3392 which applies only as a general law in case of felony.

Section 8236 as above set out lawfully limits the commencement of the prosecution to a shorter term in conformity with Section 3399 of the Revised Statutes of Missouri 1929.

Respectfully submitted,

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APPROVED:

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(Acting) Attorney General

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