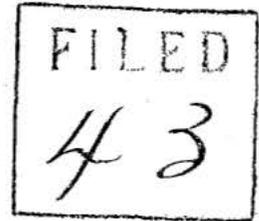


CONSERVATION COMMISSION: A misdemeanor cannot be prosecuted in
CRIMINAL LAW: a magistrate court prior to the filing
MISDEMEANOR: of an information by the prosecuting
attorney.

April 16, 1947



Honorable W. R. J. Hughes
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4/17

Dear Sir:

This will acknowledge receipt of your request for an official opinion, which reads:

"C.S.S.B. 366, Section 6, provides as follows: 'Any such agent may arrest, without warrant, any person caught by him or in his view violating or who has good reason to believe is violating or has violated this Act 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.'

"The part I have underscored is misleading to me and I shall be pleased to receive your interpretation. Evidently, an attempt is here made to expedite the handling of game violations, and it seems to indicate that the magistrate himself can proceed to try the matter without waiting for the filing of an information by the Prosecuting Attorney. In this regard it is in conflict with the general law which requires the filing of the information before any hearing of any sort in a misdemeanor case.

"What I should like to know, for the convenience of the agents who operate in this territory, is this: Is the magistrate compelled, under this act, to proceed immediately and before information is filed, or must he await the filing of the information before assuming jurisdiction?"

The particular provision of the law that you wish construed is Section 6 of Senate Committee Substitute for Senate Bill No. 366, passed by the 63rd General Assembly, which reads:

"Every authorized agent of the Commission shall have the same power to serve criminal process as sheriffs and marshals, only in such cases as are violations of this Act and rules and regulations of the Commission, and have the same right as sheriffs and marshals to require aid in the execution of such process. 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 Act 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." (Underscoring ours.)

The question to be determined is as follows: Is the magistrate, under the foregoing provision, required to hear, try and render judgment in a misdemeanor before an information is filed by the prosecuting attorney with the magistrate?

At first blush it appears that the General Assembly did intend for the magistrate to hear the case and render judgment prior to the filing of an information, but in construing the law, we must not only examine and construe the one provision, but all other law relative to the same subject matter should be construed together, and, if possible, harmonized and give effect to all provisions. In Whalen v. Buchanan County, 342 Mo. 33, 111 S.W. (2d) 177, 1.c. 180, the court said:

"* * * Statutes relating to the same subject are to be construed together and, if possible, harmonized and effect given to all provisions.
* * * * *

See also State v. State Tax Commission, 153 S.W. (2d) 43, 1.c. 45 (4).

Section 6, S.C.S.S.B. No. 366, relates to the enforcement of rules and regulations adopted by the Conservation Commission of the State of Missouri. Senate Bill No. 193, passed by the

63rd General Assembly, the same body that passed S.C.S.S.B. No. 366, provides, under Section 2 thereof, that prosecutions before a magistrate for misdemeanor shall be by information. Section 3 of said act requires all such information shall be made by the prosecuting attorney and filed with the magistrate as soon as practicable and before the party or parties accused shall be put upon trial. Section 5 of said act requires the magistrate, before whom complaints are filed, to forthwith forward such complaints to the prosecuting attorney, and said provision requires the prosecuting attorney, if, upon investigation of facts and hearing the complainant, determines that the offense was committed and that a case against the accused can be made, shall immediately file his information before the magistrate. Section 7 of the same act further provides in certain cases that the accused shall not be put upon trial for any offense until he shall be charged therewith by information.

We are of the opinion that Section 6 of S.C.S.S.B. No. 366 and Senate Bill No. 193, supra, can be construed harmoniously and reasonable construction given each and every provision thereof.

S.C.S.S.B. No. 366 deals specifically with the enforcement of fish and game laws and rules and regulations of the Conservation Commission. Section 6 of said act in part provides that the agent shall bring forth the violator 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. You will notice the underscoring refers to "as in other criminal cases." Senate Bill No. 193, supra, prescribes the procedure in magistrate courts in case of misdemeanors and at this time is the law to be followed in proceeding against a misdemeanant for violating rules and regulations of said Commission. There is also a well established rule of statutory construction that the Legislature, in enacting laws is presumed to know the law in effect at the time of passing same and take such laws into consideration; also, they are presumed to know any judicial construction placed on said laws by the courts. (See Reed v. Goldneck, 86 S.W. 1104, 112 Mo. App. 310. Also, Graves v. Little Tarkio Drainage District, 345 Mo. 557, 134 S.W. (2d) 70.) This being true, the Legislature must have had in mind Section 17, Article I of the Constitution of Missouri 1945, which prohibits the prosecution of any misdemeanant other than by indictment or information, and reads:

"That no person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information, which shall be concurrent remedies, but this shall not be applied

to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger, nor to prevent arrests and preliminary examination in any criminal case."

The foregoing constitutional provision makes an exception to the filing of an indictment or information, prior to prosecution, when to do so it will prevent arrest and is not necessary before hearing preliminary examination in any criminal case. However, that exception does not apply to one charged with having committed a misdemeanor, for the person so charged in such case is not provided with a preliminary examination. Such preliminary examinations only apply in case of a felony. So, for sake of argument only, if the foregoing act should be construed as to hold that a magistrate may proceed to hear, try and determine the matter prior to the filing of an information by the prosecuting attorney, then under the foregoing constitutional provision such acts would be held in direct violation thereof, and at least that part of said acts in conflict with the foregoing constitutional provision would be held unconstitutional and of no effect. However, we believe there is no conflict, and that Section 6 of S.C.S.S.B. No. 366 means that the magistrate shall hear the matter without delay and as provided in other criminal cases, refers to the procedure under Senate Bill No. 193, supra.

CONCLUSION

Therefore, it is the opinion of this department that a magistrate cannot try a person charged with a misdemeanor in his court until the prosecuting attorney has filed an information in such case with the magistrate as provided in Senate Bill No. 193, supra.

Respectfully submitted,

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APPROVED: /

J. E. TAYLOR
Attorney General

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