

MISSOURI CONSERVATION
COMMISSION:
REGULATIONS FOR LAKE
WAPPAPELLO:



Regulations promulgated by the Missouri Conservation Commission, which regulations are that decoys shall not be left unattended in the Lake Wappapello area and that shooting blinds erected by private individuals in that area may be occupied by the first person who reaches them and finds them vacant are within the power of the Conservation Commission to make.

January 2, 1957

Honorable Rex A. Henson
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"I would like to have your opinion on some of the recent rules and regulations of the Missouri Conservation Commission with respect to the coming duck season.

"When a meeting of the sportsmen was held in Poplar Bluff a few days ago, I was informed that you attended the meeting at which this problem was discussed, and you are, no doubt, familiar with the discontent among many of the hunters in this area.

"My first impression upon reading the recent rules and particularly the rules which provide that duck decoys left unattended in the hunting area are subject to seizure by the Commission, and the rule which provides that the duck blinds constructed in a public area such as Wappapello Lake are open to the public on a 'first come-first serve' basis, were rules which could not be enforced by the Commission because it appeared to me that these acts would constitute a confiscation of property in violation of the Constitution and the general laws of the state.

"Without going into the merit of the complaints of the various hunters over

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these rules and regulations, I would appreciate an opinion at an early date from you as to whether or not the laws of this state permit the Missouri Conservation Commission to pass and enforce the rules and regulations above-referred to."

The regulations upon this matter, to which you refer, together with some comments regarding them, read as follows:

"1. Waterfowl hunting privileges shall be provided on a 'first-come-first served' basis.

"2. Hunters shall build their own blinds. However, the construction of a blind or other hunting facility shall not give the builder any preference or priority rights on the use of such blind or hunting facility; neither shall it give the builder any preference or priority rights on the construction of a blind or other hunting facility on the same site in any subsequent year.

"3. Unoccupied blinds may be used by the first hunter who comes along. The builder shall not claim priority or the right to evict the first hunter who occupies the blind each day. It shall be illegal during the open hunting season to lock, bar, or otherwise render unusable any blind located on this area. Any incompleated blinds existing as such on or after the opening date of the waterfowl season may be completed and occupied on any day of the open shooting season by any hunter or hunters on a 'first come - first served' basis.

"4. Occupied blinds shall not be closer than 200 yards apart.

"5. No commercially-operated blinds will be permitted.

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"6. No decoys shall be left in hunting position unattended at any time. No decoys shall be stored in or near the blind or on the public hunting grounds overnight. Each hunting party shall remove the decoys they are using from the public hunting grounds when they cease hunting.

"REMARKS:

"The Wappapello Reservoir was opened to public hunting under a 20 year license granted to the Conservation Commission by the Secretary of War in 1946.

"Hunting pressure on the area has increased from less than 25 duck blinds in 1946 to over 600 blinds in 1955.

"The Missouri Conservation Commission has handled hunting on the Wappapello area on an administrative basis from 1946 to date. Each year a plan of management is drawn up and submitted to the U.S. Corps of Engineers for the current year's operation.

"The Corps of Engineers representatives have indicated they are in favor of firm regulations being inaugurated by the Commission to minimize some of the problems which have arisen on the area. They strongly disapprove of commercializing of duck hunting by a few resort owners. The regulations proposed for the Wappapello area are almost identical to those in force on similar Corps of Engineers lands on the Mississippi River between St. Louis and the Iowa line."

We believe that the regulations relating to unattended decoys is answered by an opinion, a copy of which is enclosed, rendered on June 24, 1953, to W. T. Bollinger, Jr., Representative from Carter County. You will note that this opinion holds that no Conservation Commission agent or other officer has any lawful authority to confiscate or

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hold permanently or destroy property of an individual used in the violation of the game and fish law or regulations of the Conservation Commission, but that such officer or agent may only take temporarily into his custody any such property to be used as evidence in the prosecution of a violator.

Section 252.230, RSMo 1949 reads:

"Any person violating any of the provisions of this chapter wherein other specific punishment is not provided, and any person violating any of such rules and regulations relating to wild life, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not exceeding three months or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment."

We believe that these decoys could be seized by a conservation agent, if the decoys were left unattended in violation of the regulation, and used for purposes of evidence in a prosecution under the above section. We believe that after such use they must be returned to the owner.

Your other question is in regard to the occupancy of duck blinds erected on the Lake Wappapello area by private individuals. Wappapello is owned by the Federal Government and is administered by the United States Department of Army Corps of Engineers. On October 10, 1946, the Secretary of War issued the following:

"The SECRETARY OF WAR, under authority of Section 4 of the act of Congress approved 22 December 1944 (Public Law 534, 78th Congress; 58 Stat. 887, 889), hereby grants to the MISSOURI CONSERVATION COMMISSION of the State of Missouri a license for a period of twenty (20) years, but revocable at will by the Secretary of War, to occupy and use, for the purpose of managing and controlling all wildlife resources, land and water areas in the WAPPAPELLO RESERVOIR AREA, Missouri, as outlined in red on the map

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attached hereto and made a part thereof.

"THIS LICENSE is granted subject to the following provisions and conditions:

"1. That the exercise of the privileges hereby granted shall be without cost or expense to the WAR DEPARTMENT, shall be subject to the approval of the District Engineer in charge of the locality, and shall effectuate the attached general plan of management, and the specific and detailed activities under said plan of Management shall be submitted to the said District Engineer by the Conservation Commission, State of Missouri, on or before 1 April 1947 and annually on or before 1 April thereafter and shall be subject to the approval of the said District Engineer.

* * * * *

Pursuant to the above the Missouri Conservation Commission enacted, by virtue of its regulation making power, Article IV, Sections 40 - 46, Constitution of Missouri, the regulations above set forth in regard to duck blinds and decoys.

The "plan of management" of the Wappapello area as worked out by the Missouri Conservation Commission was, we are informed, unofficially approved by the Army Corps of Engineers shortly after its completion. The Army Corps of Engineers, with full knowledge of the plan of management since its inception, has at no time subsequent made any criticism of it, which amounts to tacit consent.

It does appear in order for the general public to use and enjoy the Wappapello area the regulation regarding the use of duck blinds is necessary in order to keep a few persons from monopolizing the area and commercializing that to which the general public should be able to freely use.

CONCLUSION

It is the opinion of this department that the regulations promulgated by the Missouri Conservation Commission,

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which regulations are that decoys shall not be left unattended in the Lake Wappapello area and that shooting blinds erected by private individuals in that area may be occupied by the first person who reaches them and finds them vacant are within the power of the Conservation Commission to make.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:lc

1 enclosure