

CONSERVATION COMMISSION
FISH AND GAME:

Prosecution for violation of commission regulations, when misdemeanor, must be in township where offense was committed.

December 7, 1938

Hon. Donald B. Dawson
Prosecuting Attorney
Bates County
Butler, Missouri



Dear Sir:

This will acknowledge receipt of your letter of November 23, 1938 requesting an opinion on the following:

"The Wild Life Conservation agent for this county has raised a question of criminal jurisdiction which I would like for you to render an opinion on. He contends that his orders are that whenever a person is arrested charged with violating any of the fish and game laws of the State of Missouri that the party can be tried before any Justice of the Peace in the county. The particular case came up in this manner: A boy was arrested in Butler for attempting to sell game he had shot in another township. The agent charged the boy with having hunted without a license and brought the case before a Justice of the Peace here in Butler. When I learned of the facts of the case I told the agent that I felt the case should be filed before the Justice of the Peace in the township in which the boy had engaged in hunting without a license. The agent said that his orders had been that the offense continued into any township into which the boy might go even though he did not hunt except in one township. Under the criminal laws of the state it has always been

my understanding that misdemeanors must be prosecuted in the township in which they are committed. If that were the case then this boy would have to have been prosecuted in the township in which he was charged with having hunted without a license. It is possible of course that the fish and game laws constitute a contempt to the criminal laws of this state and if such would be the case I would appreciate being informed of that fact. I know that that there has been some controversy concerning the powers of the fish and game department and thought perhaps you would be in a position to inform me as to the status of this matter."

Section 3414 R. S. Mo. 1929 provides in part:

" * * that all prosecutions before justices of the peace for misdemeanor shall be commenced and prosecuted in the township wherein the offense is alleged to have been committed: * * * "

In State v. Alford 142 Mo. App. 412, the court construed the terms of this statute, using the following language (l.c. 415):

"We had occasion to pass on this statute in State of Missouri v. Grant Sextion (141 Mo. App. 694) * * * *, and we there held that in order to give jurisdiction in a misdemeanor prosecuted before a justice, that the prosecution must be instituted before some justice of the peace in the township where it is claimed the offense was committed. * * * * *

"The Legislature has the right to say in what jurisdiction statutory misdemeanors

shall be prosecuted, and to make that jurisdiction exclusive."

The Conservation Amendment, Laws 1937 p. 614, does not confer on the Conservation Commission authority to alter, by regulation, the terms of the above statute. In *Ex Parte Byron Marsh*, (No. 36192 decided at the September Term 1938, and not yet reported) the Supreme Court of Missouri, En Banc, had occasion to, and did, pass upon numerous questions involving the powers of the Conservation Commission under the above mentioned Constitutional Amendment. In that opinion the court said, "Regulation and legislation are not synonymous terms." Also it is held the Conservation Commission is only vested with the power to prescribe, within its "administrative discretion", regulations to fill in the details of the Conservation Amendment. The effect of the whole decision is that the Conservation Commission is vested with no authority to make "laws", but only administrative rules, which, because punishable as public offenses, may have the force of laws. Further the court said in the course of that opinion, "punitive laws or laws fixing punishment as for violations of administrative rules are solely referable to the legislative power and function."

The Conservation Commission having only the authority to prescribe administrative regulations, they may not delve into the punitive field reserved to the General Assembly.

The Court also held that Section 8311 R. S. Mo. 1929 is available to supply the punishment for a violation of administrative regulations of the Conservation Commission. This section is a punitive law of the legislature. Punishment for violation of the Conservation Commission's regulations being left to the legislature it naturally follows that the power to prescribe, how, when and where said punitive law is to be applied is also within the province of the legislature.

CONCLUSION

Therefore, it is our opinion that prosecution for violation of Administrative regulations of the Conservation Commission, must be in accordance with the perscriptions of the General Assembly of Missouri, any regulation of said Commission, to the contrary notwithstanding.

We desire to add, however, that we have oral information, which is all that is available because there is no compilation containing the Conservation Commission regulations, that said body has made no regulation which in anywise attempts to fix the venue for the prosecution of violations of its administrative regulations.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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