

STATE CONSERVATION COMMISSION: Sections 15387 to 15390, inclusive, R. S. Mo. 1939, are valid and existing statutes and do not conflict with the authority of the State Park Board.

February 28, 1941



Honorable I. T. Bode, Director
State Park Board
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your letter of sometime ago, which is as follows:

"We are requested to provide information regarding the application of Article 5, Chapter 129, page 3675, Vol. II, Revised Statutes of 1929.

"This law does not refer to the State parks. However, persons interested in the State Park Program have made inquiry regarding this law and have asked us to advise with them regarding its application, and we have also been asked to help plan county parks.

"In the event this law is now effective, the principal question appears to be, does the county court actually have the authority to levy the five per cent tax to be used for park purposes?

"An opinion regarding Article 5 of Chapter 129 will be appreciated. It is possible that this law might afford some help to the State Department in that counties could be encouraged to maintain their own park systems."

Chapter 129, Article 5, referred to in your letter is under the caption of "Parks, Playgrounds and Camping Sites in certain counties" and is now Article 9, Chapter 133, Sections 15387 to 15390, inclusive, R. S. Mo. 1939. The first three sections relate to counties of not less than three hundred thousand nor more than six hundred thousand inhabitants. The first section authorizes such counties to purchase or receive gifts or donations of lands for public parks and playgrounds, etc. The next section empowers the courts of such counties to appoint a board of park commissioners and outlines their duties. Section 15389 empowers the county court to make an annual appropriation for the maintenance and improvement of lands acquired or purchased.

Sections 15387 to 15390, inclusive, were passed by the Legislature in 1925 (Laws of 1925, page 182). According to the population restriction it does not appear that these sections would now apply to any county in the State with the exception of Jackson County. There is no record of these sections having been repealed or having been passed upon by the court. They are therefore valid and existing sections, in our opinion, unless they are repealed by implication, which we will discuss later.

Section 15390, R. S. Mo. 1939, was formerly Section 14268, R. S. Mo. 1929. It was enacted in 1927 by the Legislature in a single section (Laws of 1927, page 141). It is captioned in the act: "County Courts: Providing That County Courts of State May Set Aside 5 Per Cent of Revenue for Purchase of County Parks." The section is as follows:

"County courts in all counties in the state of Missouri may set aside five per cent (5%) of the county revenue fund for the purchase of county parks and the maintenance thereof; titles to land purchased shall be taken in the name of the county, and each court is authorized to set aside a sufficient amount each year for the maintenance of said parks when purchased."

We do not find that it has ever been repealed or passed directly upon by any court.

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The decision in *Vrooman v. St. Louis*, 337 Mo. 933, does not refer to the section quoted supra, but discusses fully the power of the city to construct parks for public purposes and the taxing power of counties under Section 1 of Article X of the Constitution of Missouri.

We are of the opinion that Section 15390 is a valid and existing law and the county courts of the State may act under the same, provided, that the fund of five per cent, of course, does not violate the constitutional limitation with reference to assessing and collecting taxes.

As to whether or not sections are repealed by implication, direct or otherwise, it is necessary to consult Sections 15328, 15329 and 15330, R. S. Mo. 1939. These sections were passed in 1937 (Laws of 1937, page 520). The first two sections create a state park board and define the powers and duties of said board. The last section repeals all laws in conflict with the same. The terms of the sections do not reveal any conflict in the duties of the State Park Board and Sections 15387 to 15390, inclusive. We think the sections can be considered in *pari materia* and without conflict.

Respectfully submitted,

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APPROVED:

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