

STATE PARK BOARD:) The Department of Conservation and State
CONSERVATION COMMISSION:) Parks are two separate and distinct
OFFICERS:) departments.
Duties of the Director of State Parks as
provided under Section 15329, R. S. Mo. 1939

January 14, 1942

Mr. I. T. Bode
Director,
Conservation Commission,
State Park Board
Jefferson City, Missouri



Dear Mr. Bode:

This will acknowledge receipt of your letter of January 9, requesting an official opinion from this Department, which reads:

"This is a request for an opinion on the legal possibility of entirely separating the State Park and Conservation Departments under existing law, or more particularly, for separating the Conservation Commission and the State Park Board.

"Is it legally possible to relieve the Director of Conservation of any responsibility for the work of the Park Department other than serving as a member of the State Park Board, in this event the Director of Conservation to have no more legal responsibility for any work of the department than either the Governor or Attorney-General.

"Particular reference is made to those parts of existing Park Board law which refer specifically to the Director of Conservation or to the Director of State Parks - Sec. 15328 and Sec. 15329, R. S. Mo. 1939, and more particularly

to that part of Sec. 15329 which provides that the Director shall audit all vouchers."

Your first inquiry is what is the possibility of completely separating the administration of the State Parks from that of the Conservation in the State? The Conservation Commission, at the present time, is vested with full control and regulation of conservation, wildlife, and forestry in this State. Section 16, Article 14, Constitution of Missouri, better known as the Conservation Amendment, was approved by the voters in this State on November 3, 1936. Said section provides as follows:

"The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wild life resources of the State, including hatcheries, sanctuaries, refuges, reservations and all other property now owned or used for said purposes or hereafter acquired for said purposes and the acquisition and establishment of the same, and the administration of the laws now or hereafter pertaining thereto, shall be vested in a commission to be known as the Conservation Commission, to consist of four members to be appointed by the Governor, not more than two of whom shall be members of the same political party. The commissioners shall have knowledge of and interest in wild life conservation. Vacancies shall be filled by appointment by the Governor for the unexpired term within thirty days from the date of such vacancy; on failure of the Governor to fill the vacancy within thirty days, the remaining commissioners shall fill the vacancy for the unexpired term. The first members of said commission shall be appointed for terms, as follows; one for a term of two years, or until his or her successor is appointed and qualified; two for terms of four years, or until their respective successors are appointed and qualified; one for a term of six years, or until his other successor is appointed

and qualified. Upon the expiration of each of the foregoing terms of said commissioners, a successor shall be appointed by the Governor for a term of six years, or until his or her successor is appointed and qualified, which term of six years shall thereafter be the length of term of each member of said Commission. The members of said Commission shall receive no salary or other compensation for their services as such. The members of the Commission shall receive their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties. Said Commission shall have the power to acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient for the use of the Commission, or the exercise of any of its powers hereunder, and in the event the right of eminent domain is exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the State Highway Commission. A Director of Conservation shall be appointed by the Commission and such director shall, with the approval of the Commission, appoint such assistants and other employees as the Commission may deem necessary. The Commission shall determine the qualifications of the director, all assistants and employees and shall fix all salaries, except that no commissioner shall be eligible for such appointment or employment. The fees, monies, or funds arising from the operation and transactions of said Commission and from the application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wild life resources of the State and from the sale of property used for said purposes, shall be expended and used by said Commission for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wild life resources of the State, including the purchase or other acquisition of property for

said purposes, and for the administration of the laws pertaining thereto and for no other purpose. The general assembly may enact any laws in aid of but not inconsistent with the provisions of this amendment and all existing laws inconsistent herewith shall no longer remain in force or effect. This amendment shall be self-enforcing and go into effect July 1, 1937."

The State Park Board is now vested with the control and regulation of all state parks. This is by virtue of Section 15329, R. S. Missouri 1939, which was enacted subsequent to the above Conservation Amendment creating the Conservation Commission. Said section 15329 provides:

"The state park board shall have the power to acquire by purchase, eminent domain or otherwise, all property necessary, useful or convenient for the use of said park board or the exercise of its powers hereunder necessary for the recreation of the people of the state of Missouri. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the state highway commission. Said park board shall have the power to make and promulgate all rules and regulations as it may deem necessary for the proper maintenance, improvement, acquisition and preservation of all state parks. Said park board is hereby authorized to employ such persons or assistants as may be necessary and may fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. All vouchers for the payment of bills or for compensation shall be drawn and approved by the director of state parks and when presented to the state auditor shall be paid out of the funds appropriated for such purposes."

Obviously, the fifty-ninth General Assembly in construing the foregoing amendment thought there was no part of said amendment which authorized the Conservation Commission or its agents, to regulate, control and manage state parks, for it immediately passed Sections 15328-30, inclusive, of Article 1, Chapter 133 of the Revised Statutes of Missouri, 1939, which creates and establishes a State Park Board, the members of which shall control and regulate the state parks, and further provides what their duties shall be. Had the Fifty-ninth General Assembly been of the opinion such jurisdiction was vested in the Conservation Commission there would certainly have been no need for such legislation.

It is a well established rule of statutory construction that great weight will be given by the courts to legislative interpretation of a statute as is stated in *Robertson v. Manufacturing Lumbermen's Underwriters*, 346 Mo. 1103, l. c. 1109:

"The insurance code has been on our statute books for many years. The right of appeal has been exercised by the Insurance Department as well as by litigants deeming themselves aggrieved by any judgment in favor of the department. The Legislature has not, in view of this interpretation of the law, seen fit to expressly prohibit appeals. This continued acquiescence in that interpretation by the Insurance Department and also the State Legislature implies that the law has been correctly interpreted. We rule, therefore, that the right of appeal exists in cases of of this nature and the motion to dismiss will be overruled."

Furthermore, the Conservation Amendment nowhere specifically authorizes the Conservation Commission to control and regulate the State Parks of Missouri. The Amendment clearly provides what the duties of the Commission shall be. Section 16, Article 14, Constitution of Missouri, supra,

places the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the State, including hatcheries, sanctuaries, refuges, reservations and all other property now owned or used for said purposes or hereafter acquired for said purposes and the acquisition and establishment of same and the administration of all law pertaining thereto. Nowhere is there any indication in reading said Amendment that it purports to vest such control and regulation of state parks in the Conservation Commission. Ordinarily, when there is no ambiguity to be found in a statute there is no room for construction.

It is quite true that the Conservation Commission controls and manages all hatcheries, sanctuaries, refuges, reservations and all other property now owned or used for said purpose whether same be located in state parks or otherwise. In some parks there are such things and in such cases the Conservation Commission shall assume control and regulation but there is nothing anywhere in the Amendment vesting such authority in the Conservation Commission regarding areas constituting purely recreational parks. This is vested in the State Park Board. If such powers were vested in the Conservation Commission then Article 1, Chapter 133, R. S. Missouri 1939, would be unconstitutional as being in violation of Section 16, Article 14, supra, which provides that the legislature may enact laws in aid of, but not inconsistent with, the provisions of this Amendment.

The mere fact that the legislature has in its wisdom included the Director of Conservation as a State Park Board member in no way indicates its intention to have the Conservation Commission administer the laws pertaining to the administration of the state parks.

The most logical conclusion would be that in view of the fact the Director of Conservation has certain functions to perform in the state parks upon certain wildlife areas as hereinabove mentioned and that such functions in many respects are akin to necessary functions in the administration of state parks, and the Director of Conservation being an experienced man in such administration naturally the legislature would consider it beneficial to the state to vest such person with the title of Director of State Parks.

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Therefore, it is the opinion of this Department that the law pertaining to the administration of the state parks and conservation in this state does not contemplate the two departments shall be administered jointly or that the personnel of one department shall be the personnel of the other, but that said departments shall constitute two separate departments, separate and distinct from each other.

You further inquire if it is legally possible to relieve the Director of Conservation of any responsibility for the work of the park department other than serving as a member of the State Park Board. Section 15329, supra, places an additional duty upon the Director of Conservation or under said provision, the Director of State Parks, in that all vouchers for the payment of bills or for compensation shall be drawn and approved by him. This is the only additional statutory duty required of the Director that is not required of the other members of said Board. In *Ray County v. Bentley*, 49 Mo., 1. c. 242, the court held the county court is a creature of statute and only has such powers as given it by the legislature. In so holding the court said:

"The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may chose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. (*Rear- don v. St. Louis County*, 36, Mo. 555.)"

Also, see *Harris v. Bond Company*, 244 Mo., 664, 1. c. 688-89-95 the court in referring to a special road district held in similar manner.

The same principle of law is applicable to other officers and to the members of the State Park Board as well as to the Director of said Board. Such Board is purely a creature of statute and has only such power as the legislature may see fit to give it. While the legislature has placed only one exclusive duty on the Director of State Parks, if it deems it advisable it may place additional duties on said Director. The ordinary meaning of the word "director" as most commonly understood and used is defined in Webster's New International Dictionary as, "One who directs, one who regulates, guides or orders; a manager or superintendent."

A well established rule of statutory construction applicable in the instant case is that the inclusion of one thing is the exclusion of all others as stated in *Kansas City v. Threshing Machine Co.*, 337 Mo., 913, 1. c. 930:

"It is a general principle of (statutory) interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius.*" (25 R. C. L., 981, Section 229; 25 C. J., 220; 59 C. J., 980-86, Section 580-83.)

All of which very vividly indicates to the writer that the legislature by creating the office of Director of State Parks and specifically providing what his duties shall be fully intended that such Director in such capacity should not be burdened with further statutory duties. The above statute providing that the Director of Conservation shall also be the Director of State Parks is permissible in so far as the state offices are not incompatible with each other. In *State v. Bode*, 113 S. W. (2d) 805, the court held that the Director of Conservation was a public officer. In *State ex rel. v. Bus*, 135 Mo., 325, 1. c. 330, the court said:

"The rule at common law is well settled that one who, while occupying a public office, accepts another which is incompatible with it, the first will, ipso facto, terminate without judicial proceeding or any other act of the incumbent. The acceptance of the second

office operates as a resignation of the first. State ex rel. v. Lusk, 48 Mo. 242; Mechem, Pub. Offices, secs. 420-426; Throop, Pub. Officers, secs. 30, 51.

"The rule, it is said, is founded upon the plainest principles of public policy, and has obtained from very early times. King v. Patteson, 4 B. & Ad. 9."

The question then arises as to what determines whether or not the state offices are incompatible. In State ex rel. v. Bus, supra, l. c. 338, the court said:

"The remaining inquiry is whether the duties of the office of deputy sheriff and those of school director are so inconsistent and incompatible as to render it improper that respondent should hold both at the same time. At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two; some conflict in the duties required of the officers, as where one has some supervision of the other, is required to deal with, control, or assist him.

"It was said by Judge Folger in People ex rel. v. Green, 58 N. Y. loc. cit. 304: 'Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations

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to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must, per se, have the right to interfere, one with the other, before they are incompatible at common law.'"

Since the Conservation Commission has control, management, conservation, restoration and regulation of the bird, fish, game forestry and all wildlife resources of the state including hatcheries, sanctuaries, refuges, reservations, etc., we are unable to see wherein the action of the Director of Conservation in the performance of his constitutional duty conflicts in any manner with the performance of his statutory duties as Director of State Parks.

Therefore, it is the opinion of this Department that the Director of Conservation under Article 1, Chapter 133, R. S. Missouri 1939, shall act as a member of the State Park Board and shall draw and approve all vouchers for payment of bills or compensation. This is the extent of his duties as Director of State Parks.

Respectfully submitted

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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