

CONSERVATION COMMISSION: EMERGENCY REGULATION NO. 1 is INVALID.
EMERGENCY REGULATION #1:

August 1, 1942



Honorable James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion under date of July 28, 1942, which reads as follows:

"I would appreciate your opinion as to the validity of the Conservation Commission's emergency regulation No.1 effective December 12, 1941 as the same effects the Elk River electrical power plant near Noel, Missouri in McDonald County, inasmuch as that power plant is not now in operation and all machinery has been removed from the power house and has not generated electricity for the past three years to my own knowledge.

"It is my opinion and the opinion of the owners, The Empire District Electric Co., that the cost of the reconditioning and beginning operation again would be far out of proportion to the maximum amount of electrical energy that could be generated, and the enforcement of this regulation has met with great dissatisfaction and contempt in this county for the reasons above set forth."

Section 16, Article 14, of the Constitution of Missouri vests the Conservation Commission with the authority

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to control, manage, restore and regulate the bird, fish, game, forestry and wildlife in this State. Section 16, Article 14, reads in part:

"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, * * * * *

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The above constitutional amendment clearly grants to the Commission full authority to promulgate such regulations as necessary to carry out the authority vested in said Commission by said constitutional amendment and no other regulations. (Marsh vs. Bartlett, 121 S. W. (2), 737.)

The regulation referred to in your request is Emergency Regulation #1 and reads as follows:

"WHEREAS, a state of war now exists between the United States and certain enemy Nations and it is the patriotic duty of every American citizen to safeguard those resources and facilities essential to our national well-being; and

"WHEREAS, the Conservation Commission, by mandate of the people of Missouri, expressed in Article XIV, Section 16 of the State Constitution, is charged with the control, management, restoration, conservation and regulation of the wildlife resources of this state; and

"WHEREAS, certain Federal Agencies under the direction of the President have been charged with the responsibility of protecting National Defense utilities, and have urged the protection of steam and hydro-electric generator plants and structures incident thereto, as vital points in National Defense; and

"WHEREAS, the said Agencies call attention to the fact that use of such areas by hunters or fishermen, although loyal citizens, makes it possible for a saboteur to gain access in the guise of hunter or fisherman, thus enabling him to plan or even prepare his act of sabotage without being subject to suspicion; and that they, therefore, request all cooperation possible from the Conservation Commission of Missouri in protecting these plants by closing the surrounding areas:

"NOW, THEREFORE BE IT RESOLVED that the Conservation Commission, exercising the power in it vested, does hereby ordain and establish the following emergency regulation, effective upon publication and continuing for the duration of the emergency:

"Emergency Regulation No. 1.- No hunting, trapping or fishing is permitted at any time, or in any manner, within two hundred (200) yards of the following locks, dams and electric power plants:

"U. S. Lock and Dam No. 20, near Canton, in Lewis County,
U. S. Lock and Dam No. 21, near West Quincy, in Marion County,
U. S. Lock and Dam No. 22, near Saverton, in Ralls County,
U. S. Lock and Dam No. 24, near Clarksville, in Pike County,
U. S. Lock and Dam No. 25, near Winfield, in Lincoln County,
U. S. Lock and Dam No. 26, near Alton, in St. Charles County,

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Osage River Electric Power Plant, near
Bagnell, in Miller County,
Osage River Electric Power Plant, at
Osceola, in St. Clair County,
Sac River Electric Power Plant, at Capling-
er Mills, in Cedar County,
Niangua River Electric Power Plant, or
Tunnel Dam in Laclede County,
White River Electric Power Plant, at
Powersite, in Taney County,
Shoal Creek Electric Power Plant, near
Joplin, in Newton County,
Elk River Electric Power Plant, near
Noel, in McDonald County. "

It is quite evident that while such action on the part of the Conservation Commission in promulgating such emergency regulation was apparently done solely in behalf of national defense at the request of the government and with the best of intentions it clearly exceeds such authority granted to the Commission under the Constitution and laws of the State of Missouri.

Therefore, said Emergency Regulation No. 1 is not a valid regulation and cannot be enforced by the Conservation Commission of the State of Missouri.

Respectfully submitted

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

H. H. Kay
(Acting) Attorney General

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