

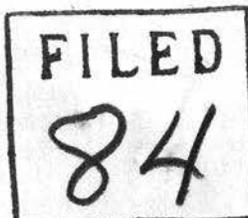
CONSERVATION COMMISSION:
FISH AND GAME:
WATERS:

Construction of Regulation 20,
Wild Life Code of Missouri, 1951.

February 26, 1951

2-28-51

Honorable LeRoy Snodgrass
Prosecuting Attorney
Miller County
Tuscumbia, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion which reads:

"Ever since the Conservation Commission restricted the taking of fish, minnows, and crayfish in or from waters within seventy-five yards of Bagnell Dam, Miller County, Missouri, considerable ill will has developed toward the Conservation Commission and their representatives. This ill feeling has developed mostly from the failure to inform the general public as to the correct interpretation of the law relative thereto, resulting in arrests at one time for an act condoned or tolerated shortly before.

"I would like to have your opinion in regard to fishing below Bagnell Dam, to wit: Whether or not a person on the bank or in a boat outside the seventy-five yard restricted area can take fish from the waters of the Osage legally even though his line and hook are drifted by the under-current within a distance less than seventy-five yards from the Dam proper. The fish in such instances are taken from the water below the seventy-five yard restricted area, the fisherman is below the seventy-five yard restricted area, but the line and hook are above and within the restricted area. Whether the line and hook are above is not a certainty, but in your opinion on this matter, please assume they are above and within the seventy-five yard restricted area."

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Section 40(a), Article IV of the Constitution of Missouri, 1945, vests in the Conservation Commission full control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of this state, and reads:

"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 owned, acquired or used for such purposes and the acquisition and establishment thereof, and the administration of all laws pertaining thereto, shall be vested in a conservation commission consisting of four members appointed by the governor, not more than two of whom shall be of the same political party. The members shall have knowledge of and interest in wildlife conservation. The members shall hold office for terms of six years beginning on the first day of July of consecutive odd years. Two of the terms shall be concurrent, one shall begin two years before and one two years after the concurrent terms. If the governor fail to fill a vacancy within thirty days, the remaining members shall fill the vacancy for the unexpired term. The members shall receive no salary or other compensation for their services as members, but shall receive their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties."

Section 45 of the same article further provides that rules and regulations of said Commission, not relating to its organization and internal management, become effective not less than 10 days after being filed with the Secretary of State as provided in Section 16 of the same article of the Constitution, which provision applies alike to all boards and administrative agencies of the executive department of the state. Said section 45 reads:

"The rules and regulations of the commission not relating to its organization and internal management shall become effective not less than ten days after being filed with the

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Secretary of State as provided in section 16 of this article, and such final rules and regulations affecting private rights as are judicial or quasi-judicial in nature shall be subject to the judicial review provided in section 22 of article V."

The particular regulation questioned herein is Section 20, adopted by the Conservation Commission and duly filed with the Secretary of State, which reads:

"Unless otherwise provided by this code, fish may be taken with the aid of rods, trotlines, throw lines, limb lines, jug or block lines, poles and lines, floats, sinkers, artificial lures, hooks, bait except game fish, and boats or other floating craft propelled by hand, sail or motor; but no fish may be taken or attempted to be taken by means of 'noodling' or rock or hand fishing, with or without hook. No tackle or device may be used to snag or snare fish at any time, except that gar may be snared at any time, and that carp, carpsucker, redhorse, sucker, buffalo and spoonbill may be grabbed and snared between April 15 and May 15 next thereafter. Not more than three (3) poles may be used by any person at one time. Not more than thirty-three (33) hooks in the aggregate, for any or all such methods, may be used by any person at any one time. Hooks attached to trotlines or throw lines shall be staged not less than two (2) feet apart. Trotlines may not be attached or tied together by one or more parties and thereby extend the number of hooks permitted. In or from the waters within seventy-five (75) yards below Bagnell Dam in Miller County, Clearwater Dam in Reynolds and Wayne Counties, Powersite Dam in Taney County, and Wappapello Dam in Wayne County, no fish, minnows or crayfish may be taken at any time. No bank lines, throw lines, trotlines or boats may be used at any time to take fish from any water within seven hundred (700) feet (the chute) below the spillway wing walls of Lakes Wappapello and Clearwater."

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Your request in no manner questions the validity of Section 20, supra, but you merely inquire as to a construction of said provision. It prohibits the taking of fish, minnows and crayfish in or from the waters within 75 yards below Bagnell Dam in Miller County, Missouri, at any time. Taking has been defined by said Commission for the purpose of the Wildlife Code and its application as follows:

"TAKE OR TAKING: Includes killing, trapping, snaring, netting or capturing in any manner, any wildlife of the state, and also refers to any lesser acts, such as pursuing, molesting, hunting, wounding; or the placing, setting, drawing or using any net, trap, device, contrivance or substance in an attempt to take; and every act of assistance to every other person in taking or attempting to take any of said resources if further referred to and included. Whenever 'taking' is permitted by this code, it shall be construed that such taking shall be in accordance with this code."

While said regulation may be somewhat ambiguous, in view of the foregoing regulations prohibiting the taking of fish in or from the waters within 75 yards of said Dam at any time and defining taking for purposes of said Wildlife Code and its application, we think it can only be construed in one manner. The regulation is not against one fishing within that distance, but is against the taking of fish in or from said waters. Apparently many persons have been confused, thinking the regulation was against fishing therein. However, it is against taking the fish.

The primary rule of construction of constitutional provisions, statutes and ordinances is to ascertain and give effect to the intention of the Legislature, if possible, from words used and to promote its object and manifest purpose. See *Union Electric Co. v. Morris*, 222 S.W. (2d) 767, 359 Mo. 564; *City of St. Louis v. Pope*, 126 S.W. (2d) 1201, 344 Mo. 479. We are of the opinion that the foregoing rule likewise applies to rules and regulations adopted by the Conservation Commission of the State of Missouri. There is another well established rule that interpretations placed upon the laws by governmental agencies charged with their enforcement are not binding on the courts, but they are entitled to serious consideration by the courts and by those whose activities are

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subject to the law. Wiley v. Stewart Sand & Material Co.,
206 S.W. (2d) 362.

It is evident that the Conservation Commission has always considered the practice of taking fish as referred to in your request below Bagnell Dam subsequent to the adoption of the foregoing Regulation 20 as illegal and in violation of said regulation. Certainly in adopting that Regulation, it was the intent of that body that no one should take fish from the waters by any means within 75 yards of said Dam.

CONCLUSION

Therefore, it is the opinion of this department that Regulation 20 of the Wildlife Code of Missouri, 1951, promulgated by the Conservation Commission and duly filed with the Secretary of State prohibits the taking of fish in the manner referred to in your request, in or from the waters within 75 yards of Bagnell Dam, Miller County, Missouri.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

ARR:VLM