

CONSERVATION:
OFFICE OF ADMINISTRATION:
DIVISION OF DESIGN AND
CONSTRUCTION:

The Department of Conservation is subject to the provisions of Sections 8.310, RSMo 1969, and Section 8.320, RSMo 1969, and accordingly must obtain the formal approval of the Commissioner

of Administration before letting contracts for repair, rehabilitation or construction of state facilities. The Department of Conservation is not required to obtain the formal approval of the Commissioner of Administration before obtaining architectural documents, supervising construction, and performing inspection and maintenance, but its procedures in carrying out these activities must conform to the reasonable procedures outlined by the Commissioner of Administration, pursuant to his authority under Section 8.320, RSMo 1969.

OPINION NO. 25

March 7, 1974



Honorable Christopher S. Bond
Governor of Missouri
Room 216 Capitol Building
Jefferson City, Missouri 65101

Dear Governor Bond:

This opinion is given in response to your request of July 24, 1973, for an official opinion, which request reads as follows:

"Does the Department of Conservation have the power and authority to obtain architectural documents, let contracts for repair, rehabilitation or new construction of facilities, supervise construction, and perform inspection and maintenance of facilities without the approval of the Commissioner of Administration?"

This question necessarily involves an examination of several state constitutional and statutory provisions.

Article IV, Section 40 of Missouri's Constitution provides, in part, as follows:

"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."

Section 44 of Article IV further provides:

"Sections 40-43, inclusive, of this article shall be self-enforcing, and laws not inconsistent therewith may be enacted in aid thereof. All existing laws inconsistent with this article shall no longer remain in force or effect."

Section 8.310, RSMo 1969, provides in part:

"The director of the division of planning and construction shall serve as advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair, rehabilitation or construction without approval of the director of the division of planning and construction, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the director of the division of planning and construction; . . ."

Section 8.320, RSMo 1969, uses similar language:

"The director of the division of planning and construction shall set forth reasonable conditions to be met and procedures to be followed in the repair, maintenance, operation, construction and administration of state facilities. The conditions and procedures shall be codified and filed with the secretary of state in accordance with the provisions of the constitution. No payment shall be made on claims resulting from work performed in violation of these conditions and procedures, as certified by the director of the division of planning and construction."

On August 8, 1972, the amendment of Article IV, Section 12, of Missouri's Constitution authorized the creation of the office of Commissioner of Administration. The function of the Commissioner of Administration is outlined by Section 26.300, RSMo Supp. 1971. Paragraph 3 of Section 26.300 provides as follows:

"3. The commissioner of administration shall, by virtue of his office, without additional compensation, head the division of budget and comptroller, the division of procurement, the division of planning and construction, and the administrative services section which are transferred to the office of administration on January 15, 1973. Whenever provisions of the statutes grant powers, impose duties or make other reference to the comptroller, the director of the budget, the director of the division of planning and construction, state purchasing agent, or the director of administrative services, they shall be construed as referring to the commissioner of administration."

At the outset it should be emphasized that neither the constitutional amendment authorizing the creation of the office of Commissioner of Administration nor the language of Section 26.300 in any way alter the scope or application of Sections 8.310 and 8.320. The effect is simply one of substitution. Whatever duties or obligations the director of the Division of Planning and Construction had prior to January 15, 1973 (the effective date of Section 26.300) now have become the responsibility of the Commissioner of Administration. Likewise, Section 26.300(3) serves only to designate the Commissioner of Administration the administrative head of the Division of Budget and Comptroller, the Division of Procurement, the Division of Planning and Construction and the Administrative Services Section. In no way do such statutory provisions make the Commissioner of Administration the administrative head of any other department within the executive branch of Missouri's state government.

The answer to the question, then, hinges on the issue of whether the provisions of Sections 8.310 and 8.320 are "inconsistent" with the provisions of Article IV, Section 40, of Missouri's Constitution. If they are inconsistent, it is clear from the language of Article IV, Section 44, that they are of no force or effect, insofar as they purport to apply to the Conservation Commission.

However, we have concluded that the provisions of Section 8.310 and Section 8.320 can be reconciled with the grant of authority given to the Conservation Commission by Article IV, Section 40 of Missouri's Constitution.

We are aided in making this determination by the well-recognized rule of law that a presumption of validity attaches to legislative enactments and a statute will never be held invalid unless it plainly appears that the legislature has transcended its power in passing it. State v. Hake, 14 Mo. App. 575 (1884). In addition it has been repeatedly held that the Missouri Constitution is not a grant but a limitation on legislative power, and except for the limitations imposed thereby, the power of the state legislature is unlimited and practically absolute. Kansas City v. Fishman, 241 S.W.2d 377 (1951); State ex inf. Dalton ex rel. Holekamp v. Holekamp Lumber Co. 340 S.W.2d 678, appeal dismissed 81 S.Ct. 1660, 366 U.S. 715, 6 L.Ed.2d 846, rehearing denied 82 S.Ct. 26, 368 U.S. 870, 7 L.Ed.2d 71.

Furthermore, although we have not found any cases or previous opinions of the Attorney General directly in point, the Attorney General has on at least three occasions been called upon to answer similar questions.

On October 18, 1937, in Opinion No. 9 rendered to George Blowers, the State Purchasing Agent, the Attorney General ruled that the constitutional mandate giving the Conservation Commission "the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state" did not exempt the Conservation Commission from the operation of the State Purchasing Agent Act, which required that the purchasing agent buy the supplies for the state government agencies.

In the course of this opinion, the Attorney General concluded ". . . It would appear that the reasonable construction to be given the Conservation Commission Act is that the control, management, etc. of the wildlife resources of the State as set forth therein is vested in said Commission, and the legislature may enact any and all laws as its wisdom dictates, except such as would by fair construction be inconsistent with a specific provision of the act creating said commission and except that the administration of the laws regulating the wildlife resources shall not be taken away from said commission."

The opinion was affirmed with little comment on October 9, 1968 by the Attorney General in response to a request from State Representative E. J. Cantrell.

The Attorney General also has ruled in Opinion No. 9 to Mr. Blowers on December 20, 1937, that notwithstanding the broad grant of authority given the Conservation Commission by Article IV, Section 40, the Commission was nevertheless subject to the State Printing Act.

We are of the opinion that the above-cited opinions remain valid. Furthermore, we feel a close reading of the applicable

state constitutional and statutory provisions compels the same conclusion.

Article IV, Section 40 insures that the "control, management, restoration and regulation" of all the state's wildlife is vested in the Conservation Commission, along with "the administration of all laws relating thereto." The fair meaning to be placed on that provision is that it guarantees that the administration of the wildlife resources of the state shall not be removed or eroded by legislative act, but that the legislature may enact laws regulating the manner in which the Commission may acquire or deal with property so long as such legislation is not inconsistent with the constitutional grant of authority.

There is, in our opinion, nothing in Sections 8.310 or 8.320 that is inconsistent with the powers granted to the Conservation Commission by Article IV, Section 40. Basically, Sections 8.310 and 8.320 require that contracts for the repair, rehabilitation or construction shall be approved by the Commissioner of Administration (formerly the Director of the Division of Planning and Construction) and that the procedures to be followed in the repair, maintenance, operation, construction and administration of state facilities must follow "reasonable" guidelines to be set out by him. There is nothing in the statutory language that would in any way divest the Conservation Commission of its "control, management, restoration, conservation and regulation" of the state's wildlife resources. The statutes simply seek to prescribe orderly and uniform procedures for the exercise of that control. That being the case, there is nothing in the language of either Section 40 or Section 44 of Article IV that exempts the Conservation Commission from the scope of Sections 8.310 and 8.320.

Although we have decided that Sections 8.310 and 8.320 are applicable to the Conservation Commission, that is not completely determinative of the specific question we have been called upon to answer, which was: "Does the Department of Conservation have the power and authority to obtain architectural documents, let contracts for repair, rehabilitation or new construction of facilities, supervise construction, and perform inspection and maintenance of facilities without the approval of the Commissioner of Administration?" A close examination of Section 8.310 reveals that while the statute imposes a duty upon the Commissioner of Administration to serve as "advisor and consultant" in all of those above-mentioned matters, the statute actually requires formal approval only as to contracts "let for repair, rehabilitation or construction." Consequently, the Department of Conservation may obtain architectural documents, supervise construction, and perform inspection and maintenance of facilities without formal approval of the commissioner provided the

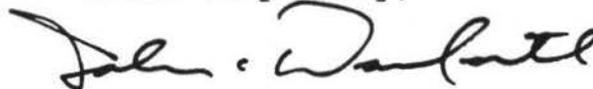
Department's procedures in doing so conform to whatever reasonable conditions and procedures have been set by the Commissioner of Administration, pursuant to his authority under Section 8.320.

CONCLUSION

It is our opinion that the Department of Conservation is subject to the provisions of Section 8.310, RSMo 1969, and Section 8.320, RSMo 1969, and accordingly must obtain the formal approval of the Commissioner of Administration before letting contracts for repair, rehabilitation or construction of state facilities. The Department of Conservation is not required to obtain the formal approval of the Commissioner of Administration before obtaining architectural documents, supervising construction, and performing inspection and maintenance, but its procedures in carrying out these activities must conform to the reasonable procedures outlined by the Commissioner of Administration, pursuant to his authority under Section 8.320, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Philip M. Koppe.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General