

FILE

Subject

*State Boards  
Forestry Fish and Game*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

July 19, 1974

Opinion No. 74- 242

Mr. Warner Moore  
1014 Century Plaza Building  
111 West Douglas  
Wichita, Kansas 67202

Dear Mr. Moore:

You state that the Forestry, Fish and Game Commission has received complaints relative to the establishment of a possession limit on game fish caught within the state. The question arises whether the commission has the authority to establish such possession limits.

Two enactments must be considered. K.S.A. 32-164(c) provides:

"The forestry, fish and game commission of the state of Kansas is hereby authorized and empowered to establish by regulation the open seasons in which fish of any species or bullfrogs may be caught or taken; and to establish by regulation the legal size limits of fish or frogs which may be taken, and to establish by regulation the number of fish or frogs which may be taken in any one calendar day." [Emphasis added]

K.S.A. 32-215 states in pertinent part:

"The forestry, fish and game commission is hereby authorized to fix bag limits, creel limits, season limits, size limits,

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weight limits, quality limits (on furs), rest days, or other conditions governing the taking of game, game birds and other birds, fur-bearing animals and fish at any and all times; . . ."

In our view, there is no contradiction between the two enactments. The latter is merely more specific and clearly enables the commission to establish the necessary limits on possession, size, quality, etc.

In regard to your inquiry concerning the commission's or director's authority to close certain areas to fishing pursuant to K.A.R. 23-3-1, it appears that the language as it now stands, limits the closing of certain fishing areas to a period of six (6) weeks, or "until the situation causing said closing is corrected."

K.A.R. 23-3-1 states:

"The open season for the catching and taking of fish in Kansas is hereby established to be from January 1 to December 31, both dates inclusive, except those areas closed by posted notice, pursuant to commission approval.

"Provided further, That in the event the director deems it advisable or necessary to close certain areas to public fishing, he may within limitations prescribed by the commission, cause said area to be posted. Said area may be posted closed to fishing for a period of up to two (2) weeks (14 days) with the option of said closing being extended for two (2) week periods thereafter until the situation causing said closing is corrected.

"Provided further, That when the situation causing said closing is removed then the director shall cause the posted notice to be removed and the area will then be reopened to public fishing."

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From the situation you have given (closing areas from 6:30 p.m. to 7:00 a.m. each day), the commission should alleviate possible ambiguity by amending the regulation. The amendment should clearly state that the commission and/or director may close a certain fishing area for a stated period each day as posted.

We are hopeful that the foregoing will be assistance.

Very truly yours,



VERN MILLER  
Attorney General

VM:DRH:bw