690821.1

NATURAL RESOURCES, DEPARTMENT OF: Warrants for violation of fish and game laws may be issued by district court magistrate without prior written approval of prosecuting attorney when complaint is made by a conservation officer who also makes request for warrant.

No. 4665 August 21, 1969.

Dr. Ralph A. MacMullan, Director
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Your recent letter poses the following problem:

"Subsection (b), Section 8511, Chapter 85, Act 236, P.A. 1961, as amended by Act 154, P.A. 1968 (Minor Court Bill) provides:

'Sec. 8511. Magistrates shall have the following duties: . . . (b) To issue warrants for the arrest of any person upon the written authorization of the prosecuting or city attorney.'

"Based on the foregoing, certain magistrates have refused to issue warrants to conservation officers for violation of Act 165, P.A. 1929 (Sportsman's Fishing Law) and Act 286, P.A. 1929 (The Game Law of 1929) without written authorization of the prosecuting attorney.

"Subsection (b) of Section 8511, supra, is in conflict with Sec. 2, Act 192, P.A. 1929 (300.12, C.L. 1948; M.S.A. 13.1222) which provides in part:

'Sec. 2. The director of conservation, or any officer appointed by him, may make complaint and cause proceedings to be commenced against any person for a violation of any laws or statutes mentioned in Section 1 of this act, without the sanction of the prosecuting attorney of the county in which such proceedings are commenced, and in such case, such officer shall not be obliged to furnish security for costs.'

"Our conservation officers have, since 1929, obtained warrants without sanction of the prosecuting attorney on an opinion of the Attorney General (1928-30, p. 658) which held the authorization of this statute for the issuance of a warrant in game law violation cases without either the approval of the prosecutor or the posting of security for costs is an exception to the general provisions of the statute.

"We respectfully solicit your opinion as to whether this ruling is still binding with respect to subsection (b) of Section 8511, supra."

The refusal of magistrates to issue warrants in conservation cases is apparently based on Section 8511 of the district court establistment act[1] referred to by you as the "Minor Court Bill."

Our review of the law discloses that prior to the abolition of the justices of peace and enactment of the district court act, the Supreme Court con-

[1] Act 154, P.A. 1968; M.C.L.A. § 600.8101 et seq.; M.S.A. 1969 Cum. Supp. § 27A.8101 et seq.

sidered in *People v. Holbrook* (1964), 373 Mich. 94, the provisions of the Code of Criminal Procedure to which you refer.[2] The section construed is quoted at page 96 of the case:

> "* * * C.L.S. 1961, §774.4 (Stat. Ann. 1961 Cum. Supp. §28.1195) reads as follows:
>
> 'It shall not be lawful hereafter for any justice of the peace to issue warrants in any criminal cases except where warrants are requested by members of the State police or any sheriff's department for traffic or motor vehicle violations until an order in writing allowing the same is filed with such justice and signed by the prosecuting attorney of the county or unless security for costs shall have been filed with the justice.' "

The *Holbrook* case grew out of a warrant issued by a justice of the peace upon complaint of a state trooper without consent of the prosecuting attorney for violation of a game law. Commenting on the above statute, the court said at page 98:

> "There is a further exception to the above statute, contained in C.L.S. 1961, §300.12 (Stat. Ann. 1958 Rev. §13.1222), which reads:
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> 'The director of conservation, or any officer appointed by him, may make complaint and cause proceedings to be commenced against any person for a violation of any of the laws or statutes mentioned in section 1 of this act,[3] without the sanction of the prosecuting attorney of the county in which such proceedings are commenced, and in such case, such officer shall not be obliged to furnish security for costs. Said director, or any of said officers, may appear for the people in any court of competent jurisdiction in any cases for violation of any of said statutes or laws, and prosecute the same in the same manner and with the same authority as the prosecuting attorney of any county in which such proceedings are commenced, and may sign vouchers for the payment of jurors' or witness' fees in such cases in the same manner and with the same authority as prosecuting attorneys in criminal cases.'
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> "Since the legislature has made certain exceptions within C.L.S. 1961, §774.4 (Stat. Ann. 1961 Cum. Supp. §28.1195), since it also provided a special procedure for handling game violations in C.L.S. 1961, §300.12 (Stat. Ann. 1958 Rev. § 13.1222)[3], and finally, in view of the clear language of the statute itself which states that a justice of the peace cannot lawfully issue a warrant in criminal cases unless the statute is followed, defendant was unlawfully proceeded against."

The Court thus recognized the special provisions of Section 2 of Act 192, P.A. 1929, as amended, authorizing a conservation officer to make

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[2] The Supreme Court had before it a version of the act which was subsequently amended by Act 307, P.A. 1965; M.C.L.A. § 774.4; M.S.A. 1969 Cum. Supp. § 28.1195, but these amendments are not relevant to the matter under consideration.

[3] Conservation act, game and fish enforcement, P.A. 1929, No. 192 as amended (C.L. 1948 and C.L.S. 1961, § 300.11 et seq., Stat. Ann. 1958 Rev. § 13.1221 et seq.).—REPORTER

complaint and obtain a warrant without prior approval of the prosecuting attorney.

The *Holbrook* case was reviewed in *People v. Carter* (1967), 379 Mich. 24. In *Carter* there was no order by the prosecuting attorney for a warrant, although he had prepared the complaint. Justices Adams, Kavanagh, Souris and O'Hara held that preparation of the complaint fulfilled all of the purposes of the statute. The remaining Justices, Black, Kelley and Dethmers (Justice Brennen did not participate) were for overruling *People v. Holbrook* and reinstating *People v. Griswold* (1887), 64 Mich. 722, holding that failure to approve warrant by prosecuting attorney does not deprive the court of jurisdiction. Thus, although Carter has cast some doubt on the effect of *Holbrook* with respect to the need for a prosecutor to sign a written order for a warrant in every instance, the case does not affect the *Holbrook* ruling with respect to the authority of the director of natural resources, or any officer appointed by him, to commence proceedings against a game law violator or without sanction of a prosecuting attorney.

It now becomes necessary to determine whether or not the district court act changes these prior holdings.[4] Examination of it indicates that Section 9922 provides in part:

> "All duties and powers which by law may be performed by justices of the peace, circuit court commissioners, judges of municipal courts, judges of police courts and judges of the recorders court of Cadillac shall be performed after December 31, 1968 by the district court. * * * * This act shall supersede and revoke any acts or parts of acts in conflict with its provisions but only to the extent of such conflict."

Of particular consequence is the last sentence which indicates that acts or parts of acts in conflict are repealed to the extent of conflict. The section of the district court act possibly in conflict with the conservation statute is Section 8511 spelling out the powers of magistrates:

> "Magistrates shall have the following jurisdiction and duties:
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> * * * *
>
> "To issue warrants for the arrest of any person upon written authorization of the prosecuting or city attorney."

The idea of a conflict in this area is not new. In fact, it was considered in a prior Attorney General Opinion dated October 28, 1929 found in the Biennial Report of the Attorney General 1928-30 P. 658 where the question was raised as to whether officials of the Department of Conservation could obtain warrants without the authorization of the prosecuting attorney. It was thought that this was in conflict with provisions of the Criminal Code being Section 4 of Act 290, P.A. 1929. That act provided that the justice of the peace was not to issue a warrant in criminal cases without approval of the prosecuting attorney. The Attorney General said in substance that when a general intention was expressed and also a particular intention which is incompatible with the general one, the particular inten-

[4] M.C.L.A. § 600.8101 et seq.; M.S.A. 1969 Cum. Supp. § 27A.8101 et seq.

tion should be considered as an exception to the general one. He also stated that the law did not favor repeals by implication. The Attorney General concluded that a conservation officer could obtain a warrant without the authorization of the prosecuting attorney.

It is clear, therefore, that the special statute relating to the director of conservation and his officers (now director of the Department of Natural Resources) should be given effect since repeals by implication are not favored and here there is no claer attempt to repeal by implication. See *Attorney General ex rel. Owen v. Joyce* 233 Mich. 619 (1926); *Mayor of Port Huron v. City Treasurer of Port Huron,* 328 Mich. 99 (1950); *McDonald v. Schnipke* 380 Mich. 14 (1968).

For the reasons stated, it is my opinion that approval of warrants by a prosecuting attorney in fish and game violations is not required when the complaint is signed by a conservation officer who also makes a request for the warrant. The district judge or magistrate may issue a warrant in such case without the prosecuting attorney's approval.

FRANK J. KELLEY,
Attorney General.

690905.1

RETIREMENT SYSTEMS: Judges—Retirement annuity of retired member.

CONSTITUTIONAL LAW: Impairment of contract for judges' retirement annuity.

A retired circuit judge who was a member of the judges retirement system during the time that the judges' retirement act contained the escalator clause providing a retirement annuity of one-half of the annual salary currently paid by the state to circuit judges but who becomes a retirant at a time when the legislature has repealed the escalator clause, is entitled to the benefits of the escalator clause and should draw a retirement annuity of one-half of the annual salary currently being paid by the state to circuit judges of the state.

No. 4677

September 5, 1969.

Mr. Lawrence L. Farrell
Executive Secretary
Judges' Retirement System
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You have requested my opinion on the following question:

Whether a retired circuit judge who was a member of the judges' retirement system during the time that the judges' retirement act contained the escalator clause providing a retirement annuity of one-half of the annual salary currently paid by the state to circuit judges, but who becomes a retirant at a time when the legislature has amended the judges' retirement act to repeal the escalator clause, is entitled to