

LAWS RELATING TO RECREATIONAL ACTIVITIES

Preliminary Draft

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University of Mississippi

Law Center

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## FOREWORD

This volume is one of eight representing a compilation of Mississippi laws which most significantly affect the use and development of the state's marine and coastal zone. The compilation has been prepared by the Mississippi Law Center at the University of Mississippi School of Law, under the auspices of the University of Mississippi and the Mississippi Universities Marine Center, Dr. Sidney E. Upham, Director.

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## RECREATIONAL ACTIVITIES

### INTRODUCTION

The law of Recreational Activities in the State of Mississippi can be roughly classed as falling within one of five broad areas: (1) hunting and fishing, (2) public recreational facilities, (3) private commercial amusements, (4) public parks and shrines, or (5) water recreation. As suggested by these sub-titles, the scope of this area of state law is extensive indeed, cutting across sectors of the law on Living Resources, Mineral Resources, and Environmental Control. Consequently, the law dealing with each of these other fields should be consulted as appropriate problems arise which appear to be primarily recreational in nature.

In this brief introduction, reference will be made only to the broad realms dealt with by each of the five sections of this volume. Footnotes are omitted, since in such a precursory outline they would certainly be incomplete and possibly misleading. It might be helpful to consider each introductory paragraph as here footnoted to its corresponding parent chapter in the text.

Control over hunting and fishing activities in Mississippi is vested in two primary agencies. The Marine Conservation Commission focuses upon all forms of life in the ocean and tidal regions, while the State Game and Fish Commission regulates the utilization of animal life found inland or lying within fresh waters of the state. Statutes govern the procedures to be followed in hunting, fishing, obtaining licenses, establishing seasons, setting limits on the number of animals which may be taken, the providing penalties for violation

of pertinent statutes and regulations. The extent to which a citizen of the state may enjoy hunting and fishing as provided by state law may depend upon the number of variable factors, such as the type of game or fish sought, the age of the hunter, or the time of the year. Any or all of these considerations may prove crucial in an individual case. Frequent reference to the textual material in this volume will probably prove necessary. For a discussion of the structure of the State Game and Fish Commission and the Marine Conservation Commission consult *Laws Relating to Living Resources*, pp. 4-8.

A host of state and county agencies share responsibility for public recreational facilities. Many designated counties are authorized by the legislature to construct convention centers. Hospitality stations, rest areas, and information centers for the promotion of the tourist trade and improvement of the image of the state have also been provided for and are under the control of the State Highway Commission, as that agency acts in conjunction with the Mississippi Agricultural and Industrial Board. The extent to which municipalities may operate to construct and maintain recreational facilities has been delineated by the legislature and is explained in the text of this volume. Harrison County has been singled out as the home for a multi-purpose coliseum, to be erected and supervised by the Mississippi Gulf Coast Coliseum Commission. The creation and structure of the Mississippi Fair Association, whose purpose it is to establish and promote an agricultural and industrial fair for the state, is treated.

Private amusements such as theaters, circuses, and shows are regulated by both state law and municipal ordinances. Periodic amusements not perman-



entirely located within the state are responsible to the Secretary of State and the Mississippi Fair Commission. Special regulations have recently been instituted for the child of the young generation, the rock festival or outdoor concert. Ironically enough, the State Board of Health has been tapped as the agency which administers them. Certain other forms of commercial amusements - bowling alleys, pool halls, skating rinks - fall primarily under the aegis of the municipalities in which they are operated. The range of the state amusement tax is another feature of private amusements which is considered.

The Mississippi Parks Commission oversees the operation of all state public parks and shrines, both for the benefit of the citizenry and the attraction of tourists to the state. The powers of the Parks Commission are, as explained in the text, coterminous with those which are necessary to the efficient management of parks and historic sites. The governor is not without power in this sphere, for he has the authority under certain circumstances to close a park or parks. Municipalities and counties within the state have limited authority to operate parks, playgrounds and swimming pools, and to acquire land for these purposes. A national parkway may also be built and maintained by the State Highway Commission.

The Boat and Water Safety Commission has been granted dominion over regulations of the use of waters of the state for recreational purposes. The power of the Commission to protect the recreational capacity of our waters, together with the role played by the Boating Act of 1960, is defined here. Registration and numbering of vessels, safety of operational standards, and penalties are all points of concern which should be given careful attention. The

principle of beneficial use which governs the recreational use of water in Mississippi plays a significant part in the law in this area. Appropriation of water and pollution control are included for consideration, as is the role of the Board of Water Commissioners.

## CHAPTER ONE

### WATER RECREATION

#### I. PUBLIC POLICY

In the interest of the general public welfare of the people of the State the water resources of the State should be put to the most beneficial use and waste should be discouraged. To this end public and private funds will be invested to promote and expand the water resources of the State.<sup>1</sup> Water occurring in any watercourse, lake, or other natural body of water in the State may be appropriated in accordance with the Water Resources Conservation Act, and control and use for all beneficial purposes shall be in the State to utilize and protect these resources.<sup>2</sup> Portions of natural flowing streams greater than five (5) miles in length and having an average depth of three (3) feet may be used by the public for transportation, fishing, and water sports.<sup>3</sup>

#### II. BOAT AND WATER SAFETY

A. Boat and Water Safety Commission - Composition, Powers and Duties. The members of the Boat and Water Safety Commission are appointed by the governor with the advice and consent of the senate. The members of the Commission must be qualified electors who own a vessel<sup>4</sup> as well as members of a pleasure boating organization with five years experience as owner and operator of a pleasure boat.<sup>5</sup> These members must fairly represent all sections of the state.<sup>6</sup> Initially, one member will serve a one year term, one a two year term, one a three year term, and two members will serve year terms, but

all members will serve until a successor is appointed.<sup>7</sup> A commission chairman named by the governor has the duty of meeting as often as once a week with the Commission's enforcement officers in interest of carrying out the officers' duties under the Boating Act of 1960.<sup>8</sup>

The jurisdiction of the Commission extends to the waters of the state<sup>9</sup> except those coastal and tidal waters of the Mississippi Sound which are under the concurrent jurisdiction of the Marine Conservation Commission and the United States Coast Guard.<sup>10</sup> However, because of an agreement among the Boat and Water Safety Commission, the Marine Conservation Commission, and the United States Coast Guard, the Boat and Water Safety Commission has jurisdiction of the coastal and tidal waters of the state for purposes of administering and enforcing the Boating Act of 1960.<sup>11</sup>

The Boat and Water Safety Commission [hereinafter the Commission] may make such rules and regulations as necessary for the administration of the Boating Act of 1960 and the safety of the public in the use of the state's waters.<sup>12</sup> The Commission may make special rules and regulations for agencies and other political subdivisions upon application setting out the reasons for which special rules are needed.<sup>13</sup> Before adopting any rule or regulation, the Commission must give thirty (30) days notice of a public hearing which must be held prior to the adoption.<sup>14</sup> The hearing shall be held in a place convenient for the largest number of persons affected or, if the rule or regulation is of statewide application, in Jackson, Mississippi.<sup>15</sup> Upon adoption, the rule or regulation must be filed with the sheriff of each county and maintained as a public record.<sup>16</sup> They

also shall be published in a convenient form and given to each recipient of a certified boat number.<sup>17</sup>

The Commission may employ and fix the salary, duties, and tenure of such clerical assistants and other agents as necessary and no more than ten (10) enforcement officers.<sup>18</sup> The officers have the power to execute and serve warrants and subpoenas as required for enforcement and investigation and to board and examine vessels required to be certified under the Boating Act.<sup>19</sup> The Commission may own and maintain such vehicles and equipment as necessary for the administration of the Boating Act.<sup>20</sup>

B. Interagency Cooperation. The Commission cooperates with any agency or subdivision of the state to make such special rules and regulations as are necessary.<sup>21</sup> The Board of Directors of the Pearl River Valley Water Supply District has the power to regulate hunting, fishing, boating, camping and all recreational privileges in, along or around any body of land owned by the District.<sup>22</sup>

C. Licensing. Every undocumented vessel<sup>23</sup> propelled by machinery in excess of ten (10) horsepower using the waters of the state and every vessel owned by the state and using the high seas must be numbered in accordance with state law except vessels of the United States, state and municipal vessels, life-boats, undocumented racing vessels or those undocumented vessels issued temporary certificates, foreign vessels, or vessels numbered pursuant to a federally approved numbering system.<sup>24</sup> Any person owning and operating such a vessel on the waters of the state must make application for registration of such a vessel within

ten (10) days of the acquisition in the county where the vessel will be kept.<sup>25</sup> Application for registration of the vessel is made to the sheriff of the county where the vessel is usually kept.<sup>26</sup> It is the sheriff's duty to issue certificates of number for undocumented vessels.<sup>27</sup> The certificate of number must include certain personal data about the owner, a certificate of ownership, data concerning the vessel and motor, the number awarded the vessel, the intended use and place the vessel will be kept, the expiration date of the certificate, and certain notices to the vessel owner.<sup>28</sup> The applicant for a certificate must furnish a certified statement of ownership<sup>29</sup> and the serial numbers of the boat, motor and trailer.<sup>30</sup> The certificate of number must be pocket-sized and water resistant and will expire every two years on June 30, beginning on June 30, 1967.<sup>31</sup> Certificates for livery boats<sup>32</sup> and demonstrator boats of manufacturers and dealers shall be so marked.<sup>33</sup> Pending the issuance of the original certificate, the sheriff may issue a temporary certificate of number which will be valid for sixty (60) days.<sup>34</sup> The owner of the vessel must keep the certificate of number on board the vessel whenever the vessel is in operation.<sup>35</sup>

The number awarded a boat shall be a permanent number for the boat and remain with it until the boat is destroyed or abandoned. The boat's number is not transferable to another vessel.<sup>36</sup> The number given each vessel consists of three parts: the first part is the letters "MI", the second is a number with a maximum of three digits, and the third is a two letter designation of the county of issuance, e.g., "YZ" for Yazoo County.<sup>37</sup> The number must be painted or attached on each side of the forward half of the vessel in block letters and numbers three (3) inches high and must be clearly legible.<sup>38</sup> No other number should be

carried on the bow of the boat.

The owner must make an application for renewal within ninety (90) days of the expiration date on the certificate of number or the application will be treated in the same manner as an original application. However, if the application is made within one (1) year after the expiration the same number will be issued.<sup>39</sup> An application for a certificate of number for a numbered vessel by a new owner will be regarded as an original application, but if the vessel is registered in the same county as it was previously, the new number will be identical with the old one.<sup>40</sup>

If a certificate is lost or destroyed, the owner must notify the issuer in writing describing the loss or destruction within fourteen (14) days and a new certificate will be issued.<sup>41</sup> The certificate may be cancelled or voided when it is surrendered for such purpose, when a new number is issued for the same vessel, when a marine document is issued by the Bureau of Customs for the vessel, when the application for certification contains false or fraudulent information, or when the number is willfully mutilated or altered.<sup>42</sup> When the owner of a numbered vessel changes his address, the issuer of such number must be notified of the change.<sup>43</sup> The certificate of number must be surrendered if the change of residence is to another state or the boat will be kept in another state.<sup>44</sup> If the vessel has been lost, destroyed, abandoned or transferred to another person the owner must surrender the certificate to the issuer within fifteen (15) days.<sup>45</sup>

Any person registering a boat or boats under the Boating Act must also register the serial numbers of all outboard motors owned by him.<sup>46</sup> However, a change of motors is not required to be reported.<sup>47</sup>

Each state must recognize a valid certificate issued in another state. However, a foreign vessel which operates in Mississippi waters for longer than ninety (90) consecutive days is required to register under the Boating Act.<sup>48</sup>

D. Equipment Requirements. All vessels are required to carry a United States Coast Guard approved life preserver for each person on board, a paddle, and, during hours of darkness, a light sufficient to make the vessel's presence known for a reasonable distance or a light complying with federal regulations for such a vessel.<sup>49</sup> The vessel must be seaworthy and safe with sufficient ventilation for safe operation. All vessels in the Mississippi Sound or coastal or tidal waters of the state must comply with the federal standards for vessels of its classification.<sup>50</sup>

E. Operation. No vessel, even those exempted from numbering under the Boating Act, may be operated in a reckless or negligent manner or at a greater rate of speed than is reasonable under the circumstances.<sup>51</sup> Nor may any vessel be operated by one who is physically or mentally incapacitated so as to be incapable of safely operating the vessel, or by one under the influence of intoxicating liquor or narcotics, or by anyone when the vessel is overloaded.<sup>52</sup> No one under twelve (12) years of age may operate a motorboat required to be numbered, except for livery boats, unless accompanied by someone over seventeen (17) who is capable of operating the motorboat.<sup>53</sup>

Any person or organization sponsoring a regatta, motorboat or other boat race, marine parade, tournament or the like must provide adequate protection from marine traffic interference and hazards.<sup>54</sup>

When a boat is operated while towing a person on water skis, an aquaplane



or similar device, an observer other than the operator and over ten (10) years of age is required to be aboard.<sup>55</sup> No one may operate any motorboat so as to cause the skis or similar device or the person thereon to collide with any object or person except slalom buoys, ski jumps, or like objects used in competitive skiing.<sup>56</sup> On some waterways of the state water skiing is prohibited from one hour after sunrise.<sup>57</sup>

There are several special "rules of the road" provided for pleasure boating. Several rules relate to the interpretation of horn signals. One blast of the vessel's horn means "I direct my course to the starboard"; two blasts mean, "I direct my course to port"; three blasts mean, "My engines are going full speed astern"; and four blasts mean, "Danger". However, in crossing situations, one blast signifies the vessel's intention of holding course and speed. In situations of reduced visibility, the horn should be sounded once every minute. If towing under conditions of reduced visibility, one long and two short blasts should be given each minute. When anchored in reduced visibility situations, the horn should be sounded for five (5) seconds every minute.<sup>58</sup>

All vessels should keep to the right in narrow channels. In crossing situations the boat to starboard has right of way and must hold course and speed. The other boat must pass astern of the boat to starboard. Vessels meeting head on should pass port to port. As the vessels approach, the intention to pass in this manner should be signaled by one blast and answered the same. If the vessels are far enough to one another's starboard, the boats should signal and answer with two blasts and pass to the starboard.<sup>59</sup>

In passing situations, the vessel being overtaken has the right of way.

The overtaking vessel may pass on the right after one blast of its horn answered with one blast or on the left after two blasts answered with two. If the vessel being overtaken sounds a danger signal, the overtaking vessel may not overtake.<sup>60</sup>

The Biloxi Port Commission has formulated particular rules governing the port and yacht basin. A boat operator must avoid injury to other boats or facilities while using the Yacht Basin. The owner of each boat is responsible for any damage caused by his wake whether the boat was being operated by him, his agent or a family member.<sup>61</sup> No boat may exceed a speed of three (3) miles an hour in the Yacht Basin.<sup>62</sup> No alterations may be made to any berth, slip, pier, or other facility by a boat owner or operator.<sup>63</sup> The owner is responsible for any defacement or damage and must make recompense as directed by the Commission.<sup>64</sup> Waste matter may not be thrown into the Yacht Basin or on or in its facilities, including matter from bilge pumpouts or washdowns. Boat cabins must be locked and boats properly secured at all times. Anchors may not be used if the boat is secured in a berth or other facility.<sup>66</sup> Boats may be refueled only in specified refueling areas and no flammable liquid may be transferred into boats tied, anchored, or berthed in the Basin.<sup>67</sup> No smoking is allowed in the area of the fueling areas.<sup>68</sup> Tenders, barges, vessels, and rigging may not be repaired, maintained, or stored at dockside areas, piers, bulkhead, or like places. All walkways must be kept clean and clear.<sup>69</sup> No swimming, skiing, diving, or reckless boat operation is allowed in the Basin.<sup>70</sup>

The Biloxi Port Commission may control and restrict all water and land

approaches to the port, including closing these approaches for civic functions.<sup>71</sup>

It is within the discretion of the Commission to remove any vessel from the Yacht Basin during an emergency at the boat owner's expense and liability.<sup>72</sup> Anyone other than a boat owner or his authorized personnel wishing to board a boat berthed or anchored in the harbor must present written permission from the owner to the harbormaster.<sup>73</sup> If a berth will be vacant for longer than three (3) days, the harbormaster must be notified; moreover, the Commission reserves the right to use the berth during the boat's absence.<sup>74</sup> The Commission has a lien on all boats in addition to any lien given by law for unpaid damages and rents.<sup>75</sup> Fish cleaning must be done in areas provided for it, and cleaning garbage may not remain overnight.<sup>76</sup> The Commission is not responsible for losses or damages from theft, vandalism, fire, weather, or other boats using the facility.<sup>77</sup> Visiting craft must register for berthing privileges with the harbormaster.<sup>78</sup> Fishing, crabbing, and other uses of the recreation area are allowed only during daylight, except pier fishing which is allowed until ten (10:00) p. m.<sup>79</sup>

No trailer may be parked in the hoist area for more than twenty-four (24) hours.<sup>80</sup> Dry storage of boats or equipment is not allowed except by special permission.<sup>81</sup> Vessels are lifted to and from the water at the owner's risk. Overhead cradle boat hoists are limited to six thousand (6,000) pounds; electrical mast-type hoists are limited to two thousand (2,000) pounds.<sup>82</sup> Persons using equipment of the Biloxi Small Craft Harbor are responsible for the negligent loss or breakage of such equipment.<sup>83</sup>

F. Accidents. A boating accident is thought to include any occurrence resulting in damage to or by an undocumented motorboat or an undocumented

pleasure or recreational vessel.<sup>84</sup> Any boating accident - including, but not limited to, flooding, capsizing, floundering, collision, fire, explosion, or disappearance other than by theft - involving a boat or vessel subject to the Boating Act must be reported to the sheriff of the county in which the accident occurred when the accident results in loss of life or injury causing incapacitation for more than seventy-two (72) hours or property damage in excess of one hundred dollars (\$100).<sup>85</sup>

The certificate of number must include notice to the owner that it is his duty, as well as the duty of anyone involved, to stop and render aid if involved in a boating accident and to report all boating accidents involving injury, death, or property damage of over one hundred dollars (\$100).<sup>86</sup> A written report of a boating accident should be submitted within five (5) days of such accident unless death results in which case the report should be made within forty-eight (48) hours.<sup>87</sup> The report should include the names and numbers of the vessels involved, where and when the accident occurred, sea and weather conditions, the names, addresses, ages and boating experience of operators involved, names and addresses of anyone killed or injured, damage to the crafts including repair cost, an accident description and the names and addresses of any witnesses.<sup>88</sup>

Venue for an action arising out of such an accident is either the county where the accident occurred or the county where the owner resides or the boat is kept.<sup>89</sup> A non-resident is deemed to appoint the Secretary of State as his attorney for service of process.<sup>90</sup> Any vessel owner or operator is civilly liable for any damage proximately caused by the negligent failure to comply with the Boating Act; however, this Act should not be construed as limiting any other action at common law or admiralty law.<sup>91</sup>

Any person or organization sponsoring a regatta, boat race, marine parade, tournament, or the like must provide adequate protection from marine traffic interference and hazards.<sup>92</sup>

G. Penalties and Enforcement. All peace officers and other law enforcement officials have the power and duty to enforce the provisions of the Boating Act within their respective jurisdictions.<sup>93</sup> The Commission may have no more than ten (10) officers whose duty it is to enforce the provisions of the Boating Act.<sup>94</sup>

For violations of the provisions of the Boating Act regarding accidents, reckless driving, water skiing, or changing or mutilating any number on any boat or motor or assisting or failing to report such change, the penalty may not exceed one hundred dollars (\$100) or imprisonment no longer than thirty (30) days or both.<sup>95</sup> Any other violation of the Boating Act besides these may be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100).<sup>96</sup> A vessel, motor or trailer having numbers that appear to have been changed in violation of the Boating Act may be confiscated and sold under a judgment of the circuit court after giving at least five (5) days notice to the owner to appear and show good faith.<sup>97</sup>

Any person who places an obstruction in any navigable waterway and fails to remove it within a reasonable time or pollutes any such water with matter calculated to make the water unfit for drinking or the sustenance of fish is guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50) or imprisonment for not more than thirty (30) days or both.<sup>98</sup> Furthermore, it is a misdemeanor punishable by a fine of not more than twenty dollars (\$20) to

place debris of any kind on a beach which may cause injury to a barefoot person, where the beach is designated or used for public recreation.<sup>99</sup>

Each district attorney and county prosecutor has the duty to prosecute or defend for the state any criminal or civil action arising out of the Boating Act or rules or regulations promulgated thereunder.<sup>100</sup> Venue of such actions may be set in the county where the owner resides or the boat is kept or, if arising out of a boating accident, where the accident occurred. Operation of a vessel in state waters by a nonresident is deemed to operate as an appointment of the Secretary of State as his agent for service of process.<sup>101</sup> Money collected as fines under the Boating Act will be divided with one-half going to the treasury of the county having jurisdiction of the violation and one-half to the State Boating Improvement Fund.<sup>102</sup>

### III. SMALL CRAFT HARBORS

Municipal authorities or the port commission may provide small craft and pleasure craft harbors and facilities, including adjacent parks and recreational facilities, in order to promote tourism and recreational trade in the port.<sup>103</sup> In addition counties on the Gulf of Mexico or Mississippi Sound having certain assessed valuation may float bonds to construct such facilities.<sup>104</sup> Any county which has established a county port authority or development commission may make all necessary improvements to the channels and support facilities of the harbor and may purchase such equipment as necessary for its operation.<sup>105</sup>

### IV. WATER QUALITY

The right to use the surface waters of the state is not absolute but rather

is subject to the principal of beneficial use.<sup>106</sup> The Board of Water Commissioners normally approves those uses which are for beneficial purposes and do not unreasonably affect the public interest.<sup>107</sup> No one may divert water from a stream without having a valid right to do so under the Water Resources Conservation Act.<sup>108</sup> Rights among competing claimants are determined on a priority basis by considering the date on which each filed a claim to the water with the Board.<sup>109</sup> No appropriation of water may be allowed where it would impair navigability or reduce the stream standards set by the pollution control laws which are based on the average minimum stream flow.<sup>110</sup> The right to appropriate water is equal to any other property right and may be taken away only by a court of competent jurisdiction; however, for good cause shown, the Board may modify or terminate the appropriation at any time.<sup>111</sup>

The Board has the authority to permit the appropriation of only those watercourses running in excess of the established average minimum flow<sup>112</sup> and only such lake water standing in excess of the established average minimum lake level.<sup>113</sup> However, as a special exception, the Board may allow domestic and municipal users to use greater amounts of water than that in excess of the average minimum standards if the water will be immediately returned in substantially the same amount.<sup>114</sup> As the request of an appropriator, the Board may also allow a temporary or permanent change in the location of the place of diversion as originally approved. Such a change without the approval of the Board is a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200).<sup>115</sup> Where an appropriator ceases the specified beneficial use of the water for three (3) consecutive years, his right terminates unless the Board grants an extension.<sup>116</sup>

Where water rights are adjudicated by any court, the Board should be notified within ten (10) days in order that it might aid in the distribution of water in accordance with the court's decree.<sup>117</sup>

In order to obtain a right of appropriation for a beneficial use, an application describing the water to be appropriated and the use to which it will be put<sup>118</sup> including proposed dams, dikes etc.<sup>119</sup> - must be submitted to the Board. Prior to the Board's approval, the applicant must give at least ten (10) days notice of the pending approval, and any affected person must be granted a hearing.<sup>120</sup> Where the Board feels that it would be prejudicial to the public interest to allow the full amount of water requested to be used, it may grant less water.<sup>121</sup>

Within sixty (60) days after completion of the works for diversion, the applicant must notify the Board which will then determine if the works comply with approved plans and, if so, issue an appropriate license.<sup>122</sup> If either the application or license is denied but the applicant continues construction of the works for diversion, an injunction may be issued to stop construction.<sup>123</sup> A party aggrieved by such a ruling or any ruling of the Board may appeal to the circuit court of the county in which the diversion exists.<sup>124</sup>

Subject to the common law and the water rights of others, a person may build and maintain a dam as long as an average minimum flow of one-half million gallons of water per day is allowed to pass; moreover, he may use up to three hundred (300) acre feet of water without a permit from the board as long as the use does not reduce the minimum flow.<sup>125</sup> If, however, the stream to be dammed lies in whole or in part in a levee district, the district's permission to construct the dam must be obtained.<sup>126</sup> Any dam or reservoir to be constructed on any watercourse of the state must be approved in writing by the Board stating that



such structure will not affect the plans for proper water resource utilization.

For the purposes of the Water Resources Conservation Act, unappropriated waters are those: (1) which have never been appropriated, (2) which have been appropriated but are not being used for the purpose for which they were appropriated, (3) which the Board has appropriated but are not being used for the beneficial use for which they were appropriated, and (4) which though appropriated seep or flow back into the watercourse.<sup>127</sup> Unappropriated waters may be appropriated by filing with the Board as previously discussed.

The Board may divide the state into water districts relating to water resources; however, no district may be established until necessary.<sup>128</sup> The Board may enter into agreements concerning this state's share of water which also flow through our neighboring states.<sup>129</sup> The Board must report to the legislature within ten (10) days after the beginning of each regular session on its work during the biennium.<sup>130</sup>

There are certain minimum water quality standards applicable to all waters of the state. They must be kept free from unsightly sludge-forming discharges, floating debris, scum, and the like and from discharges producing color, odor, or conditions that may create a nuisance and from discharges that may be toxic to humans, animals or aquatic life; moreover, municipalities and industries must give their wastes at least secondary treatment.<sup>131</sup> Areas designated for water contact sports may not be located so near discharge areas as to require disinfection of the discharge.<sup>132</sup>

## WATER RECREATION

## FOOTNOTES

1. Miss. Code Ann. § 5956-01 (Supp. 1972).
2. Id.
3. Act of Apr. 20, 1972, Ch. 391, [1972] Miss. Gen. Laws.
4. A "vessel" is defined as "every description of water craft, other than a seaplane, used or capable of being used for water transportation".  
Miss. Code Ann. § 8496-02 (Supp. 1972).
5. Id. § 8496-02.
6. Id.
7. Id.
8. Id.
9. "Water of the state" is defined as water within the state "as well as the high seas when used as part of a journey to or from the State, but does not include any private pond or lake not used for boat rentals or for charging a fee to fish therein." Id. § 8496-02.
10. Id. § 8496-23.
11. Agreement Concerning Recreational Boating Between the Marine Conservation Commission and the Boat and Water Safety Commission, June 14, 1971.
12. Miss. Code Ann. § 8496-23 (Supp. 1972).
13. Id. § 8496-24.
14. Id. § 8496-23.

14. Id.
15. Id.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id.
21. Id. § 8496-24.
22. Id. § 5956-64.
23. An "undocumented vessel" is "a vessel not required to have and which does not have a valid marine document issued by the Bureau of Customs".  
Id. § 8496-02.
24. Id. § 8496-03.
25. Id. § 8496-07; Mississippi Boat & Water Safety Comm'n, Handbook of Mississippi State Boating Rules and Regulations [hereinafter cited as Handbook of Boating Rules].
26. Miss. Code Ann. § 8496-07 (Supp. 1971); Handbook of Boating Rules.
27. Miss. Code Ann. § 8496-10 (Supp. 1972).
28. Id.
29. Id. § 8496-09.
30. Handbook of Boating Rules.
31. Miss. Code Ann. § 8496-11 (Supp. 1972); Handbook of Boating Rules.
32. A "livery boat" is "any boat for rent or hire". Miss. Code Ann. § 8496-02 (Supp. 1972).

33. Id. § 8496-11.
34. Id.
35. Handbook of Boating Rules.
36. Id.
37. Miss. Code Ann. § 8496-05 (Supp. 1972); Handbook of Boating Rules.
38. Miss. Code Ann. § 8496-06 (Supp. 1972); Handbook of Boating Rules.
39. Miss. Code Ann. § 8496-08 (Supp. 1972).
40. Id. § 8496-12.
41. Id. § 8496-08; Handbook of Boating Rules.
42. Miss. Code Ann. § 8496-13 (Supp. 1972).
43. Id. § 8496-12; Handbook of Boating Rules.
44. Miss. Code Ann. § 8496-12 (Supp. 1972); Handbook of Boating Rules.
45. Miss. Code Ann. § 8496-12 (Supp. 1972); Handbook of Boating Rules.
46. Miss. Code Ann. § 8596-25 (Supp. 1972).
47. Id. § 8496-12.
48. Handbook of Boating Rules.
49. Miss. Code Ann. § 8496-19 (Supp. 1972); Handbook of Boating Rules.
50. Miss. Code Ann. § 8496-19 (Supp. 1972); Handbook of Boating Rules.
51. Miss. Code Ann. § 8496-20 (Supp. 1972).
52. Id.
53. Id.
54. Id. § 8496-23.
55. Id. § 8496-21; Handbook of Boating Rules.
56. Miss. Code Ann. § 8496-21 (Supp. 1972).

57. Handbook of Boating Rules.

58. Id.

59. Id.

60. Id.

61. Biloxi Port Comm'n R. 1.

62. Id. R. 2.

63. Id. R. 3.

64. Id. R. 4.

65. Id. R. 5.

66. Id. R. 7.

67. Id. R. 8.

68. Id. R. 9.

69. Id. R. 10.

70. Id. R. 12.

71. Id. R. 14.

72. Id. R. 15.

73. Id. R. 16.

74. Id. R. 17.

75. Id. R. 18.

76. Id. R. 20.

77. Id. R. 21.

78. Id. R. 26.

79. Id. R. 28.

80. Id. R. 29.

81. Id. R. 30.
82. Id. R. 31.
83. Id. R. 32.
84. Miss. Code Ann. § 8496-16 (Supp. 1972); Handbook of Boating Rules.
85. Miss. Code Ann. § 8496-16 (Supp. 1972); Handbook of Boating Rules.
86. Miss. Code Ann. §§ 8496-10, 8496-18 (Supp. 1972); Handbook of Boating Rules.
87. Miss. Code Ann. § 8496-17 (Supp. 1972); Handbook of Boating Rules.
88. Miss. Code Ann. § 8496-17 (Supp. 1972); Handbook of Boating Rules.
89. Miss. Code Ann. § 8496-27 (Supp. 1972).
90. Id.
91. Id.
92. Id. § 8496-23.
93. Id. § 8496-26; Handbook of Boating Rules.
94. Miss. Code Ann. § 8496-23 (Supp. 1972); Handbook of Boating Rules.
95. Miss. Code Ann. § 8496-25 (Supp. 1972); Handbook of Boating Rules.
96. Miss. Code Ann. § 8496-26 (Supp. 1972); Handbook of Boating Rules.
97. Miss. Code Ann. § 8496-25 (Supp. 1972); Handbook of Boating Rules.
98. Miss. Code Ann. § 2414 (1956).
99. Miss. Code Ann. § 2018.7 (Supp. 1972).
100. Id. § 8496-26.
101. Id. § 8496-27.
102. Id. § 8496-26.
103. Id. § 7591(e); Miss. Code Ann. § 7613 (1956).
104. Miss. Code Ann. § 7606 (1956).

105. Miss. Code Ann. § 7605-06 (Supp. 1972).
106. Id. § 5956-07.
107. Id.
108. Id. § 5956-04(a).
109. Id.
110. Id. §§ 5956-04(e), (f).
111. Id. § 5956-05.
112. Id. § 5956-04(c). The "average minimum flow" is the average of minimum daily flow occurring during each of the five (5) lowest flow years in the past twenty (20) consecutive years. Id. § 5956-02(i).
113. Id. § 5956-04(d).
114. Id. § 5956-04.
115. Id. § 5956-23.
116. Id. § 5956-06.
117. Id. § 5956-24.
118. Id. § 5956-16.
119. Id. § 5956-17.
120. Id. § 5956-18(a).
121. Id.
122. Id. § 5956-19.
123. Id. § 5956-18(b).
124. Id. § 5956-25.
125. Id. § 5956-04(b).

126. Id.
127. Id. § 5956-15.
128. Id. § 5956-14.
129. Id. § 5956-21.
130. Id. § 5956-27.
131. Air and Water Pollution Control Comm'n Reg. I-67A § II (1968).
132. Air and Water Pollution Control Comm'n Reg. I-67A § III (3) (1968).



## CHAPTER TWO

### PUBLIC PARKS AND SHRINES

#### I. MISSISSIPPI PARK COMMISSION

A. Composition; General powers and duties. The Mississippi Park Commission consists of nine (9) commissioners who are appointed by the Governor.<sup>1</sup> The Mississippi Park Commission replaces the Mississippi Park System.<sup>2</sup> Whenever the words "Mississippi Park System" or the word "system" appear in the laws governing state parks, they shall be considered as meaning the "Mississippi Park Commission".<sup>3</sup> All funds held in the "Mississippi Park Systems fund" have been transferred to a fund known as the "Mississippi Park funds", and all monies collected by the Mississippi Park Commission have been deposited in this fund.<sup>4</sup> Expenditures are made by requisition signed by the executive director of the Mississippi Park Commission or his representative.<sup>5</sup>

The Mississippi Park Commission has jurisdiction and control over all state parks; it operates these parks for the purpose of providing outdoor recreational activities and enjoyment for citizens of the state and also for the purpose of attracting visitors to the state.<sup>6</sup> The Commission is responsible for setting up a uniform accounting procedure for all state parks.<sup>7</sup> This procedure accounts for all monies collected and expended by the various parks and provides for periodic audits.<sup>8</sup>

The Commission may accept gifts, bequests of money, or other property, real or personal, to be used for the purpose of advancing the recreation and conservation interest in state parks.<sup>9</sup> The Commission is also authorized to purchase property, real or personal, to be used for state park purposes.<sup>10</sup>

The Mississippi Park Commission may contract with the State Highway Commission, or any municipality or county board of supervisors of the state for locating, constructing, and maintaining roads and other improvements in state parks and for payment of a part of the costs.<sup>11</sup> However, no county or municipality more than twenty-five (25) miles distant from a state park may contract for or pay for any such works for a state park.<sup>12</sup>

The Commission may designate employees as peace officers with power to make arrests for infraction of the rules and regulations of the Commission. Such officers are authorized to carry weapons to enforce the laws of the State of Mississippi within the confines of state parks.<sup>13</sup>

The Mississippi Park Commission is also responsible for enforcing regulations governing the occupancy and use of lands and waters in state parks under its jurisdiction.<sup>14</sup> In addition, the Commission (1) supplies recreational and conservation facilities -- charging fees for use of them; (2) reviews rates and charges for facilities and accommodations furnished at various state parks.<sup>15</sup> The Commission may make such charges as are justified but there can be no charge for entrance to a state park.<sup>16</sup>

The Mississippi Park Commission has an executive director who acts as the administrative officer of the Commission and who performs those duties assigned by the Commission and/or required by law.<sup>17</sup> He receives remuneration for his traveling expenses and compensation as is fixed by the Commission.<sup>18</sup> He has no vote in the decisions of the Commission, but he gives professional or technical advice and assistance to the Commission as required.<sup>19</sup>

Park rangers and all other employees receive salaries commensurate with their responsibilities, and granting concessions to park rangers or other Commission employees is prohibited.<sup>20</sup> All revenue from sales of any product, service or merchandise are paid into the Mississippi Park fund; however, this does not prohibit the Commission from entering into agreements with other than Commission employees in order to provide products or services.<sup>21</sup>

The Mississippi Park Commission, through its director, operates a program of preventive maintenance for all parks under its jurisdiction.<sup>22</sup>

The Commission is concerned with the proper development of designated historical sites.<sup>23</sup> However, the Commission will not accept for its supervision, control, responsibility, or jurisdiction any historic sites unless there is prior legislative approval.<sup>24</sup>

The Mississippi Park Commission appoints a local advisory committee for each state park.<sup>25</sup> These committees serve without pay and furnish counsel and advice to the executive director of the Commission and to park personnel concerning the operation and development of the park.<sup>26</sup>

On or before the first day of January of each year, the Mississippi Park Commission must present an annual report to the Governor of the State.<sup>27</sup>

This report covers the entire operation of the Commission -- including the amount of funds expended in the past year.<sup>28</sup> Each annual report which precedes the regular session of the Legislature includes an estimate of proposed expenditures for the next two (2) years and a list of recommendations for legislative action.<sup>29</sup> The Governor gives copies of this report to the Legislature, which uses the report to determine future appropriations.<sup>30</sup>

B. Interagency cooperation. The Governor of the State of Mississippi has the authority to close any one or all of the state parks in the state when, in his discretion, he determines that such closure would be in the best interest of the state or of the county or counties wherein such parks are located.<sup>31</sup> In addition, the governor may also close any state parks when, in his discretion, he determines that such closure will promote or preserve the public peace, order, or tranquility of the county or counties in which the parks are located, or whenever he determines that such closure will promote or preserve the public peace, order or tranquility in and of the State of Mississippi.<sup>32</sup>

The Mississippi Park Commission, under the direction of the State Forestry Commission, is authorized to sell timber, trees, dead wood, and stumps standing, growing and being upon the lands of state parks.<sup>33</sup> Before any such timber, trees, dead wood and stumps are sold, the State Forestry Commission selects and marks the trees to be cut; no trees or timber may be marked for cutting when this would destroy or mar the scenic view from the tourist observation points in the park.<sup>34</sup> The proceeds derived from the sales of these products are placed in a special fund for the improvement of the state park from which the sale was made.<sup>35</sup>

The board of supervisors of any county where the state park is located may, in its discretion, appropriate and donate up to two thousand dollars (\$2,000.00) annually to the Mississippi Park Commission.<sup>36</sup> All money appropriated and donated by any county board of supervisors may be used only for the establishment, maintenance, and support of the state parks within such county and for no other purpose.<sup>37</sup>

C. Land acquisition and control. The Mississippi Park Commission is authorized to lease any park or part of any park for up to ten (10) years to any state agency or state institutions.<sup>38</sup> Such leases may be made only for educational or recreational purposes, and parks or parts thereof may not be operated by the lessee for profit.<sup>39</sup> The Commission may also grant easements and rights-of-way which it deems to be in the best interest of a state park.<sup>40</sup>

D. Penalties and enforcement. Any person violating the rules or regulations of the Mississippi Park Commission is guilty of a misdemeanor, and upon conviction, is subject to a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00), or is subject to imprisonment for not less than ten (10) days nor more than thirty (30) days, or is subject to both fine and imprisonment in the discretion of the court.<sup>41</sup> These penalties are equally applicable to persons entering parks which have been closed by the Governor of the State -- such persons are regarded as trespassers and are guilty of misdemeanor.<sup>42</sup>

## II. COUNTY PARKS

A. Recreational districts. Any class four county<sup>43</sup> which has two (2) judicial districts, any adjoining county, and any municipality located in such counties may purchase, lease, or acquire by gift land and waters within the state; these areas may be developed and maintained as parks, athletic, cultural, educational or recreational complexes.<sup>44</sup> In such recreational districts, there are established boards of commissioners. These boards are composed of not less than five (5) nor more than fifteen (15) members, all of whom must be adult resident citizens and whose terms run for a period of four (4) years.<sup>45</sup>

These boards may lease facilities in the recreational district for commercial enterprises, employ personnel in the operation and management of specified projects, and generally control all the affairs and activities within specific projects.<sup>46</sup> Lands may not be leased for more than sixty (60) years.<sup>47</sup>

Each board member must execute a good faith and performance bond as required by the political subdivisions forming the recreational district; furthermore, board members do not receive salaries.<sup>48</sup> No member of the board of commissioners may serve if he is interested, directly or indirectly, in any commercial enterprise operating within the district.<sup>49</sup> The board of commissioners is also authorized to acquire additional realty by purchase, lease or gift.<sup>50</sup>

Recreational districts may authorize projects to promote the public welfare and interest in participation in arts, education, sports, athletics and recreational activity, and acquire, develop, provide and improve public parks.<sup>51</sup>

The board of supervisors of any county having a population of more than one hundred thousand (100,000) inhabitants may, in its discretion, employ recreational supervisors for public parks and/or playgrounds located within the county and may expend up to ten thousand dollars (\$10,000) annually for the purchase and installation of recreational equipment to be used in the public parks or playgrounds.<sup>52</sup> The board of supervisors of any such county may also create a commission known as the county recreational commission which will study the recreational needs of the youth of the county and recommend to the board the most appropriate expenditure of funds.<sup>53</sup>

Political subdivisions desiring to form recreational districts may do so by their governing boards adopting resolutions declaring their intentions to either form or become a part of a recreational district.<sup>54</sup>

B. Interagency cooperation. The County Bridge and Park Commission has the power to acquire islands, in whole or in parts, for use as parks.<sup>55</sup> Any such commission that has acquired islands adjacent to submerged lands belonging to the State of Mississippi may purchase from the state a sufficient amount of the submerged lands to be reclaimed and added to such islands.<sup>56</sup> Also, the State Land Commission, with the approval of the Attorney General and the Governor, is authorized to sell and convey these submerged lands to the commission and to issue the state's patent thereto.<sup>57</sup> The commission may also build public parks, pleasure grounds, golf courses, etc. on any islands it acquires,<sup>58</sup> and make any type of improvements necessary to render the islands usable for such purposes.<sup>59</sup>

The Governor of the State of Mississippi, on behalf of the United States, is authorized for the state to cede jurisdiction to the United States, for the purpose of locating and maintaining national military parks, or for any other public works or purposes.<sup>60</sup>

The State Board of Health has the power to establish sanitary regulations for house trailers, house trailer camps, and tourist camps. Violations of the provisions of this sanitary code are a misdemeanor, a separate offense occurring on each day of the violation.<sup>61</sup>

### III. MUNICIPAL PARKS

A. General powers and duties. The governing authorities of any municipi-

pality are authorized to create a park commission which will control and manage all parks, playgrounds and swimming pools maintained in the community.<sup>62</sup> Municipalities are also authorized to levy and collect taxes for the purpose of constructing, supporting and maintaining parks and playgrounds and other recreational facilities in the community.<sup>63</sup> Governing authorities have the power to provide for the lighting of all parks and public grounds within the municipality.<sup>64</sup>

B. Land acquisition and control. Every municipality in the state is, in effect, a municipal corporation and has the power to purchase and hold real estate -- either within or without the corporate limits -- for all proper municipal purposes, including parks.<sup>65</sup> The governing authority of municipalities also have the power to exercise the right of eminent domain to secure land for parks,<sup>66</sup> or they may apply public money or issue bonds in order to secure such lands.<sup>67</sup>

#### IV. PARKWAYS AND SCENIC EASEMENTS

The board of supervisors of any county through which the United States Government desires to construct a roadway or parkway has the power to donate rights-of-way, together with any scenic easement, for the purpose of said construction.<sup>68</sup> Before donation to the United States Government, the county may receive the necessary land by donation, gift, will or purchase. If additional land is required, the county boards are vested with the power of eminent domain to condemn for public use as a public park and for scenic easements all lands adjoining public parks or parkways.<sup>69</sup>

After donation of land by the counties to the United States Government, the Government has complete control and supervision, severally or in connection with the counties or the State Highway Department, over construction and the



making of all contracts for the completion of all highways, parkways and scenic easements.<sup>70</sup> When lands are condemned under the authority traced above, compensation shall be paid by the respective counties in which the condemned land is located.<sup>71</sup>

So far as possible, all rights-of-way and scenic easements shall be acquired or contracted for before any route is definitely located. The authorities constructing such parkways shall use diligence to protect growing crops and pastures and to prevent damage to any property not taken.<sup>72</sup>

With the approval of the Governor, the Mississippi State Highway Commission is authorized to convey to the United States Government any and all rights-of way or roads which it may own, have authority over, or possess, for the purpose of aiding in the location, building, construction and maintenance of national highways or parkways in the State of Mississippi.<sup>73</sup>

The State of Mississippi and the county boards of supervisors are authorized to grant rights-of-way, parkway rights, or scenic easements, in any sixteenth section lands to the United States Government.<sup>74</sup>

The United States Government is authorized to acquire lands in the state for the purpose of roadways and parkways; however, the State of Mississippi shall retain concurrent jurisdiction with the United States.<sup>75</sup> Power is conferred on the Congress of the United States to pass laws necessary for the acquisition of lands to be used for national roadways, parkways, and national parks.<sup>76</sup> Such national roadways or parkways cannot exceed in area, as an average throughout its length in the State of Mississippi, more than 100 acres to the mile of roadway; in addition, scenic easements must not be in excess of 50 acres to the mile of roadway.<sup>77</sup>

The Mississippi State Highway Commission has full authority to make such investigations, surveys, studies and plans in connection with any proposed national parkway as it deems necessary in order to determine whether the proposed development is advantageous to the State.<sup>78</sup> If the State Highway Commission finds that the proposed national parkway development is advantageous to the state, it has the power to perform all duties required of the state by the act of the United States Congress in order to secure the proposed development.<sup>79</sup> All lands necessary for the development of national parkways may be acquired by the State Highway Commission in fee simple and in the name of the State.<sup>80</sup> The Commission may acquire such lands by gift, purchase or by exercising the right of eminent domain; moreover, the Commission may convey these lands, or any state, county, or city lands to the United States Government as required by the Act of the United States Congress applicable to such national parkways.<sup>81</sup>

#### V. JEFFERSON DAVIS SHRINE

The complete custody, management, control and ownership of that portion of Beauvoir<sup>82</sup> known as the Beauvoir residence and the office of Jefferson Davis is under the control of the Mississippi Division of the United Sons of Confederate Veterans, a Mississippi corporation, for the purpose of establishing and maintaining a shrine to the memory of Jefferson Davis.<sup>83</sup>

## PUBLIC PARKS AND SHRINES

## FOOTNOTES

1. See Miss. Code Ann. § 5958-01(a) (Supp. 1972) for the composition of the Mississippi Park Commission.
2. Id. § 5958-01(c).
3. Id.
4. Id. § 5958-01(b).
5. Id. All funds in the Mississippi Park Fund are subject to the provisions of Miss. Code Ann. §§ 9104-01 to -51 (Supp. 1972).
6. Miss. Code Ann. § 5958-02(a) (Supp. 1972).
7. Id. § 5958-02(b).
8. Id.
9. Id. § 5958-02(c).
10. Id.
11. Id. § 5958-02(d).
12. Id. Counties and municipalities authorized to assist financially are authorized to levy an ad valorem tax not to exceed one (1) mill for the purpose of defraying such expense.
13. Id. § 5958-02(e).
14. Id. § 5958-02(f).
15. Id. Rates shall be reviewed annually.
16. Id.
17. Id. § 5958-03.

18. Id.
19. See Id. §§ 5958-03, -05 for the qualifications, duties, and responsibilities of the executive director.
20. Id. § 5958-03.
21. Id.
22. Id. § 5958-06.
23. Id. § 5958-07.
24. Id.
25. Id. § 5958-08.
26. Id.
27. Id. § 5957-07.
28. Id.
29. Id.
30. Id.
31. Id. § 5963.6 (Supp. 1972).
32. Id.
33. Id. § 5957-12(a).
34. Id. § 5757-12(b). Purchaser must pay double price on sale basis for all trees, timber or stumps cut that have not been marked for removing by the State Forestry Commission. See Id. § 5957-12(c) for procedures to be followed to effect the sale and removal.
35. Miss. Code Ann. § 5957-12(e) (Supp. 1972).
36. Id. § 5957-10.

37. Id.
38. Id. § 5958-09 (Supp. 1972).
39. Id.
40. Id.
41. Id. § 5957-09.
42. Id. § 5963.6(3).
43. According to the 1967 tabulation of classification of counties by the State Tax Commission.
44. Miss. Code Ann. § 5977-01 (Supp. 1972).
45. Id. § 5977-04.
46. Id.
47. Id.
48. But the recreational district may authorize reasonable payment for attendance at meetings of the board of commissioners and reasonable expenses incurred, including travel and lodging.
49. Miss. Code Ann. § 5977-04 (Supp. 1972).
50. Id. for the power of political subdivisions constituting the recreational district to issue bonds see Id. § 5977-05.
51. Miss. Code Ann. § 5977-08 (Supp. 1972). This power of the recreational district extends to all buildings and facilities within parks but not to the operation of shops, stores, motels, or restaurants as commercial enterprises.
52. Id. § 5977.5.
53. Id. Any such commission shall be composed of five (5) members who shall be residents of the county. One of said members shall be from each of the

supervisors districts of the county and all members shall serve without pay.

54. Id. § 5977-06. For procedures to be taken in forming recreational districts and the authorization for tax levy see generally Id. §§ 5977-06, -07.
55. Miss. Code Ann. § 5974-04(a) (Supp. 1972).
56. Id. § 5974-04(b).
57. Id.
58. See text infra.
59. Miss. Code Ann. § 5974-04(d) (Supp. 1972).
60. Miss. Code Ann. § 4157 (1956).
61. Miss. Code Ann. § 8269 (Supp. 1972).
62. Miss. Code Ann. § 3374-158 (1956).
63. Id. § 3374-164.
64. Id. § 3374-146.
65. Miss. Code Ann. § 3374-112 (Supp. 1972).
66. Id. §§ 3374-128, 5975.
67. Id. §§ 3590, 5975.
68. Miss. Code Ann. § 5964 (1952).
69. Id.
70. Id.
71. Id. § 5965.
72. Id. § 5966.
73. Id. § 5967.
74. Id. § 5969.

75. Id. § 5970.
76. Id.
77. Id. § 5971.
78. Id. § 5980. When the State Highway Commission has completed its investigations with respect to any proposed national parkway development, it shall make its findings and determination with respect to such development, stating whether or not such proposed development is advantageous to the state. Id. § 5981.
79. Id. § 5982. For the purpose of such project, the parkway is a part of the state highway system.
80. Id. § 5983.
81. Id.
82. Beauvoir is the last home of Jefferson Davis, President of the Confederate States of America. It is located on the Gulf of Mexico -- 10 miles from the city of Biloxi, Mississippi.
83. Miss. Code Ann. § 7456 (1956).

## CHAPTER THREE

## PUBLIC RECREATIONAL FACILITIES

## I. COAST COLISEUM COMMISSION

The Mississippi Coast Coliseum Commission has jurisdiction and authority over all matters relating to establishing, promoting, developing, locating, constructing, maintaining and operating a multi-purpose coliseum and related facilities within Harrison County, Mississippi.<sup>1</sup> The Commission is authorized to acquire lands in connection with said coliseum, and to own, furnish, equip and operate the same and all facilities and equipment necessary or useful to its operation.<sup>2</sup> The Commission is further authorized to sue or be sued in its own name, and to adopt uniform rules and regulations regarding the granting of franchises, licenses or leases, or the use, operation or maintenance of the premises of the coliseum.<sup>3</sup> For the purpose of providing funds for the operation of the Coast Coliseum, there shall be levied and assessed a "coliseum tax" which shall be collected from every person in Harrison County doing business in certain designated activities.<sup>4</sup> For the same purpose, general obligation bonds may be issued, with the State Bond Commission acting as the issuing agent upon the adoption of a resolution declaring the necessity of the issuance by the Coast Coliseum Commission.<sup>5</sup>

## II. LAND ACQUISITION FOR CONVENTION CENTERS

Every county within the State of Mississippi which borders the coast, and any city, town or political entity located therein, or any other specially designated county,<sup>6</sup> is authorized to acquire land for the purpose of establishing



thereon a convention center.<sup>7</sup> The term "convention center" refers to coliseums, auditoriums, pavilions, galleries, hotels, motels, restaurants, clubs and other facilities having the common objective of promoting conventions, tourism and trade within the State of Mississippi.<sup>8</sup> Use may be made of any municipal property, real or personal, for such centers, not otherwise required for municipal purposes.<sup>9</sup> However, use of such property is prohibited with respect to a municipality, town, political entity or county engaging in the business of hotels, motels, restaurants and clubs, said uses being expressly provided to be exercised only by private entrepreneurs on lease or grant of such lands and personal property by the municipality.<sup>10</sup>

In addition, any municipality, town, political entity or county designated in this Act is authorized to accept, receive, receipt for, disburse and expend federal and state monies;<sup>11</sup> further, they may sue or be sued, enter into leases or sub-leases, contract,<sup>12</sup> borrow money,<sup>13</sup> issue revenue bonds,<sup>14</sup> and do and perform all acts and things necessary to accomplish the purpose of this Act.<sup>15</sup>

### III. HIGHWAY HOSPITALITY STATIONS

The State Highway Commission is authorized to locate, design, construct and maintain hospitality stations on trunkline highways at or near points of entry into the state, and may employ such labor as necessary to complete said project.<sup>16</sup> The agency operating said completed hospitality stations shall provide for the free distribution of literature, pamphlets, refreshments and other items which may be of interest to the tourist. However, sales of any items of personal property shall be prohibited.<sup>17</sup>

The State Highway Commission is further authorized to contract with the Mississippi Agricultural and Industrial Board for the operation of hospitality stations.<sup>18</sup> Together, these agencies have been given the power to enter into agreements with adjoining states for the operation of hospitality stations in specifically designated areas.<sup>19</sup> The agencies may pay expenses agreed upon between the two states.<sup>20</sup> Both the State Highway Commission and the Agricultural and Industrial Board are authorized to accept donations and grants, and to expend any funds available to them for the purpose of establishing Hospitality Stations.<sup>21</sup>

#### IV. MISCELLANEOUS

The Mississippi State Highway Commission is authorized to acquire, improve and maintain strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to state highway rights-of-way, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway rights-of-way reasonably necessary to accomodate the traveling public.<sup>22</sup>

In order to provide information to the traveling public, the State Highway Commission is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas; in addition information centers may be established at such areas for the purpose of informing the public of places of interest within the state.<sup>23</sup>

Furthermore, the State Highway Commission shall control the erection

and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the interstate and primary highway systems in order to protect the public investment in such highways, promote the safety and recreational value of public travel, and preserve natural beauty.<sup>24</sup>

Should it be deemed feasible and advisable to promote the tourist industry in the State of Mississippi by providing more attractions in the form of development of offshore islands, the Mississippi State Highway Commission is authorized to make cost and feasibility surveys for toll highways and bridges to off shore islands.<sup>25</sup>

Municipalities, and the governing bodies thereof, have also been given the power to establish certain public recreational facilities. For example, they have the power to own, operate and regulate piers, pavilions and bath houses for public recreational purposes, and to issue municipal bonds for the purpose of the acquisition and construction thereof.<sup>26</sup> The governing authorities of municipalities may appropriate as much as \$1200 annually towards aiding, supporting and maintaining a band or concert orchestra;<sup>27</sup> additionally, they shall have the power to contribute, appropriate or donate to fair associations, domiciled in their respective counties, a sum of money not to exceed \$10,000 per annum to promote agricultural and industrial resources of such municipalities or its respective county.<sup>28</sup> Similarly, municipalities, along with the boards of supervisors of any county, may appropriate up to \$2500 annually to aid solely in the payment of premiums and awards made by fairs held and operated in their respective counties.<sup>29</sup>

The board of supervisors of any county may levy annually an ad valorem

tax upon all of the assessed property of said county for the purpose of securing funds with which to maintain fair associations, including the upkeep, repairs and payment of the necessary prizes and awards of said association.<sup>30</sup>

Certain designated counties are authorized to appropriate and expend a sum not exceeding \$500 per annum in one designation and \$1,000 in another designation, to be paid from the general funds of the county, for promoting and financing recreational activities for youth in the county.<sup>31</sup> Certain designated municipalities are authorized to pay a sum, not exceeding \$250 per month, for the purpose of building, equipping and maintaining a community park, a community house, tennis courts, bowling lanes, lakes, golf courses and swimming pools.<sup>32</sup>

School buildings, lands, property and related facilities may be sold, conveyed, leased or otherwise disposed of to any group of persons, club or association, or any county or municipality to be used as a civic, community, recreational or youth center, or to be used by any county or district fair association in connection with its activities.<sup>33</sup>

The Mississippi Fair Commission is created to set up rules and regulations, to accept money donated to be awarded as prizes, and to have full authority to perfect plans for an Agricultural and Industrial State Fair.<sup>34</sup> The commission is authorized to issue revenue bonds for the purpose of constructing, equipping and furnishing new buildings and making improvements on the State Fairgrounds, and to use admission proceeds from the fair to repay said bonds.<sup>35</sup>

## PUBLIC RECREATIONAL FACILITIES

## FOOTNOTES

1. Act of Aug. 8, 1968, ch. 530, [1968] Gen. Laws Miss. 859, as amended  
Act of May 2, 1972, ch. 435, [1972] Gen. Laws Miss.
2. Id.
3. Id.
4. Id., § 9.
5. Id., § 10.
6. Miss. Code Ann. § 3374-192 (Supp. 1972).
7. Id. § 3374-193.
8. Id. § 3374-192.
9. Id. § 3374-193.
10. Id.
11. Id. § 3374-196.
12. Id. § 3374-194.
13. Id. §§ 3374-194, 3374-195.
14. Id. § 3374-195.
15. Id. § 3374-193.
16. Id. § 8940-71.
17. Id. § 8940-72.
18. Id.
19. Id.
20. Id.

21. Id. § 8940-73.
22. Id. §§ 8023.3, 8038(h).
23. Id. § 8059.5-13.
24. Id. § 8059.5-01.
25. Id. § 8038-11.
26. Miss. Code Ann. § 3374-142 (1956).
27. Id. § 3374-155.
28. Id. § 3374-157.
29. Id. § 2985.
30. Miss. Code Ann. § 2985.5 (Supp. 1972).
31. Id. § 2965-05.
32. Id. § 3374-125.3.
33. Id. § 6328-104.
34. Id. § 4435-50.
35. Id. § 4435-50.3.

## CHAPTER FOUR

### HUNTING AND FISHING<sup>1</sup>

#### I. GENERAL

A massive body of statutory provisions regulates the sports of hunting and fishing in Mississippi and sets forth procedures regarding licensing, seasons, penalties and enforcement of hunting and fishing laws, and development of the state's living resources. The scope of this chapter will be limited to areas directly affecting hunting and fishing activities from a recreational viewpoint and will not attempt to examine the laws regulating commercial game and fish activities.

The State Game and Fish Commission and the Marine Conservation Commission are the principal agencies through which Mississippi's wildlife and fishing resources are protected and developed.<sup>2</sup> While the powers and duties of the Game and Fish Commission are broad and diverse, its primary responsibilities include the regulation and protection of game birds, game or fur-bearing animals, and fish or amphibians.<sup>3</sup> The Marine Conservation Commission is empowered to manage, control, supervise, and direct any matters pertaining to salt-water<sup>4</sup> aquatic life.<sup>5</sup> Despite the administrative powers described above, most regulation of hunting and fishing in the recreational sense, i. e., licensing, seasons, and penalties, is achieved primarily through statutory provisions.

#### II. HUNTING

A. Licensing. Generally, no one may hunt or kill wildlife and fowl in Mississippi without first obtaining a valid license. A prerequisite to the validity

of such license is that it must be issued on a special form prepared by the State Director of Conservation and must be countersigned by the Director, sheriff, warden, or other bonded agent as well as by the applicant.<sup>6</sup>

Valid license certificates authorizes the licensee to hunt and kill any game, animals, and birds during a period running from the date of issuance to the following thirtieth day of June.<sup>7</sup> The license certificates must be displayed by means of a transparent badge which attaches to the outer clothing of the licensee.<sup>8</sup>

Once the applicant has established proof of residency in Mississippi,<sup>9</sup> he may pay the sum of \$3.50 plus a 25 cent issuing fee and obtain a resident hunting license. Such license entitles the licensee to hunt all game and fowl, with the exception of deer and turkey, in any county in the state.<sup>10</sup> An additional license must be obtained at a cost of \$2.00 for the privilege of hunting deer and turkey.<sup>11</sup>

An exception is made in the case of a resident citizen of the state who has not reached the age of sixteen or has reached the age of sixty-five; such person is not required to purchase or possess a hunting license to hunt game other than deer or turkey. A resident exempt deer and turkey tag must be obtained at a cost of 50 cents plus a 25 cent issuing fee to enable such exempt person to hunt deer and turkey. Similar exemptions are provided for resident citizens who have a 100 percent service-connected disability, regardless of age.<sup>12</sup> Also, no license is required of a person who wishes to hunt on land to which he holds record title.<sup>13</sup>

A nonresident of this state may choose among four alternatives regard-



ing hunting licenses. He may purchase: (1) a state hunting license at a costs of \$25.00 which entitles him to hunt all game except deer and turkey during the fiscal year, or (2) a state hunter's permit which provides the same privileges for a period of seven days at a cost of \$6.00, or (3) a \$3.00 hunter's permit which provides the above privileges for a period of three days, or (4) a small game permit at a cost of \$15.00. Should the nonresident desire the privilege of hunting deer and turkey in Mississippi in addition to the game specified in (1), (2) and (3) above, he must purchase an additional license at a cost of \$2.00.<sup>14</sup>

In addition to the regular hunting license and the deer and turkey license, a special archery license is available to hunters desiring to hunt deer with a bow and arrow. A Mississippi resident may obtain such license at a cost of \$3.00. A nonresident must pay \$5.00 for the archery privilege, but once he kills a deer with a bow and arrow, he must immediately obtain a regular non-resident hunting license and pay the difference of \$20.00.<sup>15</sup>

The operation of shooting preserves are regulated by licensing provisions which vary in relation to the total acreage employed.<sup>16</sup> Residents may hunt on shooting preserves without any additional license other than those previously mentioned. Nonresidents must possess either a regular nonresident hunting license or a special shooting preserve license obtained at a cost of \$3.00.<sup>17</sup>

B. Seasons. Wildlife and fowl are divided into four classes regarding hunting seasons:<sup>18</sup> (1) game birds,<sup>19</sup> (2) game animals,<sup>20</sup> (3) fur bearing animals,<sup>21</sup> and (4) predatory animals.<sup>22</sup>

Generally, open season on game birds and animals runs from December 1, to February 28. Hunters desiring to kill bobwhite and quail may do so only

during a seventy-day period fixed by the Game and Fish Commission between December 1 and February 28. The Commission has the discretionary power to establish the season for wild turkey and squirrels.<sup>23</sup>

Open season on deer is somewhat irregular and runs from November 20 to January 1. Furthermore, the Game and Fish Commission is empowered to open the season not to exceed sixty days in the aggregate between November 10 and January 15 after making a public notice and holding a public hearing concerning such season. Moreover, the Commission may open additional seasons of ten days or less to commence after January 1.<sup>24</sup>

Fur bearing animals may be hunted from November 1 to March 1; the season for hunting opossums and raccoons with dogs is fixed by the Commission with regard to certain areas of Mississippi. Rabbits may be killed by licensed hunters using guns during any season in which other game may be hunted with guns.<sup>25</sup>

The Mississippi Legislature has chosen not to regulate the hunting season for predatory animals.<sup>26</sup> In fact, several statutory provisions provide for payment of a bounty on bobcats,<sup>27</sup> beaver, and nutria.<sup>28</sup> Nevertheless, the Commission may regulate the season on fox when, in its opinion, the fox is in danger of extermination.<sup>29</sup>

C. Hunter Safety Program. In the 1972 regular session the Mississippi Legislature enacted a statutory provision which authorized the State Game and Fish Commission to establish a course of instruction in hunter safety, principles of conservation, and sportsmanship.<sup>30</sup> The Commission is further authorized to cooperate with any agency or reputable association which possesses the same

objective(s) as does the hunter safety program. Moreover, the Commission may prepare any reports necessary to obtain federal assistance in the hunter safety program.<sup>31</sup>

The executive director of the Game and Fish Commission is authorized to designate a qualified hunter safety officer who shall outline all phases of course instruction, conduct general supervision of individual programs, and distribute information on such programs.<sup>32</sup>

An integral part of the program is the construction and maintenance of public outdoor and indoor target ranges.<sup>33</sup>

D. Restrictions and Penalties. Numerous statutes impose fines and penalties for violations of the Game and Fish Act or any other law or regulation designed for the protection of wildlife and fowl. Such statutory provisions are concerned primarily with the manner of taking wildlife,<sup>34</sup> the time for taking wildlife<sup>35</sup> and licensing of hunters.<sup>36</sup> The principal statute<sup>37</sup> provides that any violation of game and fish laws and regulations shall be punishable by a fine of not less than \$25.00 nor more than \$100.00. Moreover, an additional fine of \$10.00 may be imposed for each animal or bird involved in such violation.<sup>38</sup> Other statutes provide that it is unlawful to hunt out of season,<sup>39</sup> during certain hours,<sup>40</sup> or with poisons, explosives, or chemicals.<sup>41</sup> Also, the use of traps or nets is prohibited except when authorized.<sup>42</sup> In all cases where animals are hunted legally, they are taken subject to bag limits.<sup>43</sup>

Specific statutes regulate the hunting of deer and provide fines for (1) killing a doe deer;<sup>44</sup> (2) killing any deer out of season;<sup>45</sup> (3) using headlights or other lighting devices for the purpose of hunting deer;<sup>46</sup> and (4) violating the special hunting provisions for archers.<sup>46</sup>

The killing of turkeys has also merited special statutory treatment which imposes fines for killing turkey out of season<sup>48</sup> and for baiting turkeys.<sup>49</sup>

By statutory provision, the hunting license of any person convicted of a violation of hunting regulations may be revoked; and further, a mandatory jail sentence will be imposed upon any such person who, during this revocation period, is apprehended while hunting without a valid license.<sup>50</sup> Still other statutes deal directly with violations of licensing requirements and provide fines for persons giving false statements when applying for a hunting license<sup>51</sup> and for the issuance of a hunting license on an improper form.<sup>52</sup>

Miscellaneous statutes provide for fines regarding the unauthorized operation of deer camps,<sup>53</sup> violations of provisions establishing game preserves,<sup>54</sup> and trespassing on a game refuge or management area.<sup>55</sup>

### III. FISHING<sup>56</sup>

A. Licensing. Generally, each resident citizen of Mississippi desiring to fish with artificial bait or from a boat in any of the fresh waters of the state is required to purchase an annual fishing license. An exception is made in the case of any resident citizen who has not reached the age of sixteen or who has reached the age of sixty-five.<sup>57</sup> Moreover, no license is required of a person fishing on lands of which said person holds the record title.<sup>58</sup> In the case of a privately-owned landlocked lake no license is required of any person holding a written permit from the owner of such lake unless there was a charge for the fishing privilege.<sup>59</sup>

While the above license is valid from the date of issuance to the thirtieth

day of June following such date,<sup>60</sup> a shorter, three-day permit may be issued to residents desiring only temporary fishing privileges.<sup>61</sup> Furthermore, any person who can show proof of residency in Mississippi may purchase a combination resident hunting and fishing license which entitled its holder to hunt and fish seasonably all game, fish, and fowl, with the exception of deer and turkey, in any county of the state.<sup>62</sup>

Any nonresident of Mississippi, with the exception of a nonresident minor under the age of fourteen, must purchase a nonresident fishing license at a cost of \$6.00 plus 25 cents to the issuing officer.<sup>63</sup> Nevertheless, the Game and Fish Commission is empowered to issue and sell less expensive tourist permits which enable the holder to fish in the state for a period not exceeding three consecutive days.<sup>64</sup>

The taking and killing of mussels in any of the fresh waters of the state is regulated by special statutes.<sup>65</sup> In any case, a person desiring to take or kill mussels must obtain a license from the director of conservation.<sup>66</sup> Such license is valid from the date of issuance to the first day of July following and must be in the licensee's possession while taking, catching, or killing mussels.<sup>67</sup>

The power to revoke any fishing license or to deny any person a fishing license is vested in the State Game and Fish Commission. The commission may revoke or refuse to grant any person a fishing license if such person is convicted of the violation of any game and fish laws or regulations. A second conviction within twelve months results in a mandatory license revocation for a period of one year from the date of forfeiture. Before any license revocation may become effective, the Commission must give notice and a hearing to the licensee. Furthermore, if any person apprehended during the twelve months revocation period for

fishing without a valid license, he faces a mandatory jail term.<sup>68</sup>

B. Seasons. Although specific provisions regarding fishing seasons are presently absent from Mississippi statutory law, the Game and Fish Commission is not without authority to establish and regulate such fishing seasons when necessary. The Commission is empowered to close or shorten the open season as prescribed by law on any species of fish in cases of extreme emergency and in any specific locality or localities. The exercise of such power is dependent upon an investigation by the Commission and a public hearing indicating that such action is reasonably necessary to perpetuate or maintain an adequate supply of any species of fish.<sup>69</sup>

C. Restrictions and Penalties. The regulation of fishing activity in Mississippi is vested in both the Game and Fish Commission, which possesses jurisdiction over the fresh waters of the state, and the Marine Conservation Commission, which has jurisdiction over the salt waters of the state.<sup>70</sup> While recreational salt water fishing is virtually free from regulation and restrictions, fresh water fishing is regulated by many statutory provisions pertaining to fines, penalties, and the manner of taking fish.

It is unlawful for any person to use a telephone, battery, or any other electrically operated device for the purpose of killing or capturing fish.<sup>71</sup> Also, the use of any chemical powder in a public lake or stream is prohibited.<sup>72</sup> Any conviction resulting from a violation of the above provisions may result in a fine ranging from \$100 to \$500 and/or a jail sentence from 60 days to six months.<sup>73</sup> Furthermore, the use of poisons or any substance designed to stupefy or destroy fish is declared a misdemeanor and is punishable by a minimum fine of five dollars

and/or a jail sentence of at least ten days.<sup>74</sup> Dynamite, gunpowder, and other explosives are also unlawful when used to take or kill any species of fish.<sup>75</sup>

Other statutes designate certain property as contraband with respect to illegal fishing<sup>76</sup> and establish the procedure for recovering such seized property.<sup>77</sup> It is stated that any firearms or electrically operated device or any fish killed, stunned, or taken by using such devices is contraband property subject to forfeiture to the state and seizure by the Game and Fish Commission.<sup>78</sup> Statutory provisions also state that it is illegal to possess any illegal nets or illegal fishing equipment regardless of location without first obtaining a permit from the Game and Fish Commission.<sup>79</sup>

The maximum number of game fish<sup>80</sup> which may be taken is established at 100 per day for all game fish other than black bass, the limit upon which is 15 per day.<sup>81</sup> Furthermore, it is unlawful for a person to have more than two days' bag limit in his possession.<sup>82</sup>

The taking of mussels is governed by several statutes which specify the legal minimum size of mussels and regulate the manner of taking. It is unlawful to take, catch, kill, offer for sale, or have in possession, more than three percent by weight, mussels less than three inches in diameter.<sup>83</sup> Moreover, any person licensed to take, catch, or kill mussels may not operate more than one boat, with or without motor, for such purposes.<sup>84</sup>

Other statutory provisions regulate the sale and transportation of game fish within Mississippi. It is unlawful for any person to buy, sell, or offer for sale or exchange within this state any game fish whether taken within or coming from outside the state.<sup>85</sup> Statutes regarding the transportation of game fish state

that it is unlawful for any person to transport, carry, ship, or receive any game fish beyond the limits of the state.<sup>86</sup> It is further declared unlawful for any person to possess any game fish with the intent to transport, carry, or ship such fish outside the limits of the state.<sup>87</sup> Nevertheless, a nonresident may ship up to two days' limit of game fish under limited circumstances.<sup>88</sup>

Enforcement of laws for the protection of fish rests with game and fish wardens who are appointed by the State Director of Conservation subject to approval by the Game and Fish Commission.<sup>89</sup> The prosecution and defense of any cause arising under any law or regulation for the protection of fish is handled by a district attorney or county prosecuting attorney.<sup>90</sup>

The principal statute governing fines and penalties provides that, unless a different penalty is specially prescribed, any violation of laws or regulations for the protection of fish is a misdemeanor punishable by a fine of not less than \$25 nor more than \$100.<sup>91</sup> Furthermore, the court has discretionary power to impose an additional penalty of \$10 for each fish involved in such violation.<sup>92</sup> In the case of violations of laws for the protection or taking of mussels, it is provided that any person, firm, or corporation violating any such laws shall be guilty of a misdemeanor punishable by a fine of not less than \$10 nor more than \$150 and/or imprisonment up to three months.<sup>93</sup>



## HUNTING AND FISHING

## FOOTNOTES

1. This chapter will provide a brief summary of the laws relating to the sports of hunting and fishing, i. e. provisions governing licensing, seasons, and penalties. For a more extensive treatment of hunting and fishing see LAWS RELATING TO LIVING RESOURCES.
2. Pursuant to Miss. Code Ann. § 6051.5 (Supp. 1972) the Game and Fish Commission adopted Public Notice No. 1551 (Sept. 23, 1971) which established a jurisdictional boundary line between salt and fresh waters. All areas designated as saltwaters are under the jurisdiction of the Marine Conservation Commission. For the specific boundary lines which separate fresh waters and salt waters see Public Notice No. 1551 (Game and Fish Comm., Sept. 23, 1971).
3. Miss. Code Ann. § 5844 (Supp. 1972). It should be noted that other state agencies are empowered to regulate hunting and fishing to a limited extent. See e. g. Miss. Code Ann. § 5956-64 (Supp. 1972) and Miss. Code Ann. § 5956-261 (Supp. 1972) where the Board of Directors of the Pearl River Valley Water Supply District and the Pearl River Basin Development District are empowered to regulate hunting and fishing on or around any reservoir, land, or easements owned by the districts. It is further stated that such regulations may not conflict with those of the Game and Fish Commission.
4. See note 2, supra.
5. Miss. Code Ann. § 6047-04 (Supp. 1972).

6. Miss. Code Ann. § 5877 (1952).
7. Id.
8. Miss. Code Ann. § 5878 (1952).
9. See Miss. Code Ann. § 5870 (Supp. 1972).
10. Miss. Code Ann. § 5871(a) (Supp. 1972).
11. Miss. Code Ann. § 5871(b) (Supp. 1972) which also provides for the issuance of an additional deer tag at a cost of \$5.00.
12. Miss. Code Ann. § 5871(c) (Supp. 1972).
13. Miss. Code Ann. § 5876 (1952). However, anyone desiring to operate a "Deer Camp" upon his property must first obtain a permit from the Game and Fish Commission. See Miss. Code Ann. § 5899.5 (1952).
14. Miss. Code Ann. § 5872(1) (Supp. 1972). All licenses issued under this section are subject to a 25 cent agent's fee. It should be noted that the nonresident's fee will not be less than the fee charged a Mississippian for the same privileges in the state where the applicant resides. Moreover, an applicant who resides in a state which does not have a reciprocity agreement with the Mississippi State Game and Fish Commission as to nonresident hunting and which would not permit the sale of a nonresident hunting license to a Mississippian will not be permitted to purchase a license in this state. See also Miss. Code Ann. § 5911.5 (Supp. 1972).
15. Miss. Code Ann. § 5879 (1952).
16. See Miss. Code Ann. § 5899-01 (Supp. 1972) et seq. It should be noted that sixteenth section lands which have been classified as forest lands may be leased by the board of supervisors for hunting and fishing purposes. Miss. Code Ann. § 6598-11 (Supp. 1972).

17. Miss. Code Ann. § 5899-11 (Supp. 1972). All game killed on a shooting preserve must be tagged prior to preparation for consumption. See Miss. Code Ann. § 5899-08 (Supp. 1972).
18. There is one instance in which the hunting season is not dependent upon the class of wildlife or fowl to be hunted. See Miss. Code Ann. § 5899-07 (Supp. 1972) for hunting seasons for shooting preserves.
19. Miss. Code Ann. § 5867(d) (Supp. 1972). Game birds include brant, coots, doves, geese, plovers, quail, rails, river and sea ducks, sandpipers, snipe, sora, tattlers, wild turkey, and woodcock. The open season on migratory birds is fixed by Federal Migratory Bird Treaty regulations. Miss. Code Ann. § 5882 (Supp. 1972).
20. "Game animals" include bear, deer, opossums, rabbits, and squirrels. Miss. Code Ann. § 5867(a) (Supp. 1972).
21. This class of animals consists of minks, muskrats, otters, raccoons, skunks, and weasels. Miss. Code Ann. § 5867(b) (Supp. 1972).
22. All animals not classified as either game or fur bearing animals are considered predatory.
23. Miss. Code Ann. § 5882 (Supp. 1972).
24. Id. A special archery season for deer is fixed by statute to begin on October 1 and end on November 19, with a further provision that the Commission may extend the season from December 2 to December 19 on any public hunting project or game refuge. Miss. Code Ann. § 5872.5 (Supp. 1972).
25. If rabbits are destroying a man's crops, he may shoot to kill with a gun

Miss. Code Ann. § 5882 (Supp. 1972).

26. Id.
27. Miss. Code Ann. § 2890.1 (Supp. 1972).
28. Miss. Code Ann. § 2890.2 (Supp. 1972).
29. Miss. Code Ann. § 5844(n) (Supp. 1972). This closed season does not affect the right of any person to kill fox that threaten his livestock or domestic animals. Miss. Code Ann. § 5897 (Supp. 1972).
30. Miss. Gen Laws, ch. 314 (March 15, 1972). The State of Mississippi expressly assented to the "Federal Aid in Fish Restoration Act Amendments of 1970", approved October 23, 1970 (Public Law 91-503, 91st Congress).
31. Id.
32. Id.
33. Id.
34. Miss. Code Ann. § 5890 (1952), § 5866-02 (Supp. 1972), and § 5894 (1952).
35. Miss. Code Ann. §§ 5892 and 5893 (1952), § 5866-01 (Supp. 1972), and § 5888 (Supp. 1972).
37. Miss. Code Ann. § 5866 (Supp. 1972).
38. Id.
39. Any person convicted of hunting out of season shall be fined not less than \$100. Id.
40. Miss. Code Ann. § 5893 (Supp. 1972).
41. Miss. Code Ann. § 5890 (1952).
42. Miss. Code Ann. § 5894 (1952).
43. Miss. Code Ann. § 5908 (Supp. 1972).
44. Miss. Code Ann. § 5866 (Supp. 1972).

45. The fine is to be not less than \$100; the hunter's license may also be revoked by the Commission for a period of one year. Miss. Code Ann. § 5866-01 (Supp. 1972).
46. Such fine shall not be less than \$250 nor more than \$500. Miss. Code Ann. § 5866-02 (Supp. 1972).
47. Such violation is treated as a misdemeanor punishable by a fine of not less than \$50 nor more than \$300. Miss. Code Ann. § 5872.5 (Supp. 1972).
48. The maximum fine is \$250. Miss. Code Ann. 5866 (Supp. 1972).
49. Conviction will result in a fine from \$35 to \$100. Id.
50. A person is entitled to a hearing before the Commission prior to any revocation of his license. Miss. Code Ann. § 5881 (Supp. 1972).
51. Such act is a misdemeanor punishable by a fine from \$100 to \$500 and the fraudulently acquired license is null and void. Miss. Code Ann. § 5883 (Supp. 1972).
52. Such issuance is a misdemeanor punishable by a fine from \$100 to \$500 and such person is forever barred from issuing licenses in the state. Miss. Code Ann. § 5877 (1952).
53. Anyone guilty of operating a deer camp without first having obtained a permit from the Commission shall be fined up to \$100. Miss. Code Ann. § 5899.5(6) (Supp. 1972).
54. Any such violation is a misdemeanor punishable by a fine from \$100 to \$500 and/or imprisonment up to one year in the county jail. Miss. Code Ann. § 5899-14 (Supp. 1972).

55. Miss. Code Ann. § 5844-24 (Supp. 1972). Such trespass is a misdemeanor punishable by a fine from \$10 to \$100 and/or imprisonment up to 30 days in the county jail.
56. Provisions which regulate the taking of oysters, shrimp, crabs, and menhaden are primarily directed at commercial fishing. For a discussion of both saltwater and freshwater commercial fishing, see chp. 3, LAWS RELATING TO LIVING RESOURCES.
57. Miss. Code Ann. § 5906 (a) (Supp. 1972).
58. Miss. Code Ann. § 5876 (1952).
59. Miss. Code Ann. § 5906(a) (Supp. 1972).
60. Miss. Code Ann. § 5877 (1952).
61. Miss. Code Ann. § 5844(q) (Supp. 1972).
62. Miss. Code Ann. § 5871 (Supp. 1972). An exception is made in the case of a resident citizen who has not reached the age of sixteen or who has reached the age of sixty-five or who has a 100 percent service-connected disability.
63. Miss. Code Ann. § 5904(a) (Supp. 1972). It is further provided that such fee shall not be less than the fee charged a Mississippian for a non-resident fishing license in the state in which the applicant resides. In no case will the nonresident fee be reduced below the \$6.00 amount mentioned in the text.
64. Miss. Code Ann. § 5844(q) (Supp. 1972). For a discussion of the question of whether a nonresident, who pays the owner for the privilege, may fish in a privately-owned, land-locked lake without first obtaining a non-

resident fishing license, see State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

65. See Miss. Code Ann. § 5915 (Supp. 1972) et seq.
66. Miss. Code Ann. § 5915 (Supp. 1972).
67. Miss. Code Ann. § 5916 (Supp. 1972).
68. Miss. Code Ann. § 5881 (Supp. 1972). Such jail term shall not be less than thirty days nor more than six months.
69. Miss. Code Ann. § 5844(a) (Supp. 1972).
70. See note 2, supra.
71. Miss. Code Ann. § 5900(b)(1) (1952).
72. Miss. Code Ann. § 5900(b)(2) (1952). This prohibition is not applicable to the owner of any fish pond using such chemical in his privately-owned pond.
73. Miss. Code Ann. § 5900(b)(3) (1952).
74. Miss. Code Ann. § 2326 (1952).
75. Miss. Code Ann. § 5900(a) (1952). An exception is made in the case of gross fish as buffalo and gar which may lawfully be taken by the use of not more than one-fifth of three drams of gunpowder used in a single-barrel shotgun to propel a harpoon rod.
76. Miss. Code Ann. § 5866-04 (Supp. 1972).
77. See Miss. Code Ann. § 5866-04 (Supp. 1972) et seq.
78. Miss. Code Ann. § 5866-04 (Supp. 1972). It is further stated that no property rights exist in any person, natural or artificial, nor are any such rights vested in any person with respect to contraband property.

79. Miss. Code Ann. § 5903, 5(1) (Supp. 1972). It should be noted that possession of a trap, fishing tackle, fish, or any device used for taking fish in their natural habitat is prima facie evidence that the person in possession has been fishing. Miss. Code Ann. § 5884 (1952).
80. For definition of "game fish", see Miss. Code Ann. § 5867(c) (1952).
81. Miss. Code Ann. § 5908 (Supp. 1972). Actually, the Game and Fish Commission may set the limit for game fish, but such figure must comply with the maximum figures specified in § 5908.
82. Id.
83. Miss. Code Ann. § 5919 (1952). An exception is made in the case of mussels used for culture and scientific purposes. Any person, other than agents of public educational or scientific institutions or federal government departments engaged in the scientific study of mussels, must pay a fee in order to take mussels from the fresh waters of the state for culture and scientific purposes. Miss. Code Ann. § 5920 (1952).
84. Miss. Code Ann. § 5918 (1952). However, an additional boat may be used for towing only if no equipment for taking, catching, or killing mussels is used or kept thereon.
85. Miss. Code Ann. § 5885 (1952). An exception is made for the owner of a private pond in that he may secure a permit from the Game and Fish Commission to sell fish grown or cultivated by him. Miss. Code Ann. § 5903 (1952).
86. Miss. Code Ann. § 5886 (1952). Each game fish in possession or received for transportation constitutes a separate offense.
87. Id. The offering or reception of any game fish for shipment outside the state



by a person or corporation within Mississippi is deemed *prima facie* evidence that such fish were killed, captured, or taken within the state.

88. See Miss. Code Ann. § 5886 (1952) for affidavit and filing requirements.
89. Miss. Code Ann. § 5851 (Supp. 1972). It is further provided that all sheriffs, deputy sheriffs, constables, and peace officers of the state are designated as ex-officio special game and fish wardens. Miss. Code Ann. § 5857 (1952).
90. Miss. Code Ann. § 5858 (1952). Furthermore, circuit judges are required to give grand juries the provisions of the laws relating to fish and to urge strict inquiry into all violations thereof.
91. Miss. Code Ann. § 5866 (Supp. 1972).
92. Id.
93. Miss. Code Ann. § 5922 (1952).

## CHAPTER FIVE

### PRIVATE COMMERCIAL AMUSEMENTS

#### I. CIRCUSES, THEATERS AND FAIRS.

The governing authorities of municipalities shall have the power to adopt reasonable ordinances for the regulation of circuses, shows, theaters, theatrical exhibitions, concerts, amusement parks, etc.<sup>1</sup>

It shall be unlawful for any person, firm or corporation, owning or operating any moving picture establishment, to show any obscene, indecent or immoral picture. This offense is punishable as a misdemeanor.<sup>2</sup> Similarly, it is a misdemeanor<sup>3</sup> to show previews of motion pictures classified as "restricted", during the showing of "general audience" motion pictures.<sup>4</sup> In any case, it shall be a misdemeanor<sup>5</sup> to charge admission to or admit a minor to any premises where there is exhibited a motion picture or show which depicts nudity, sexual conduct or obscene conduct harmful to minors.<sup>6</sup> Any movie lawfully presented may be shown throughout the week, including Sundays after one o'clock p. m.<sup>7</sup> All motion picture theatres and drive-in movies are subject to an amusement tax.<sup>8</sup>

Any carnival, circus, fair, minstrel or like concern not permanently domiciled within the state, which shall enter the state for the purpose of doing business, shall make a full disclosure relative to its financial responsibility, to the Secretary of State of Mississippi.<sup>9</sup> The Secretary of State may require said concern to present evidence of insurance, and further to disclose the type of ownership of the concern, its domicile, and if owned by more than one entity,

the full name, domicile and type of entity.<sup>10</sup> After such information is presented to the Secretary of State, he shall issue, at his discretion, a certificate of compliance, which shall be valid for twelve months, to said concern.<sup>11</sup> The Secretary of State shall further act as agent for service of process on any carnival, circus or fair doing business within the State of Mississippi.<sup>12</sup> Said concerns shall be served as provided for nonresident motorist defendants.<sup>13</sup>

Rodeos, carnivals and shows may operate under the auspices of the Mississippi Fair Commission and participate in the annual State Fair, upon agreement to pay the Commission a percentage of its gate receipts. When such arrangements have been made, it shall be a misdemeanor for the rodeo, carnival or show to give out free passes.<sup>14</sup>

While motor vehicle taxes are prescribed in Mississippi,<sup>15</sup> no such tax shall be imposed on the wagons or trailers, or the tractors drawing the same, of circuses, carnivals and fairs using municipal streets or public highways when such wagons and trailers are shipped into the State by railroad, and the use of said streets and highways is merely for transporting between the point of loading and unloading and the location of the show.<sup>16</sup>

## II. ROCK FESTIVALS AND OUTDOOR CONCERTS.

The State Board of Health shall establish health and safety regulations for rock festivals and must approve any plans submitted by any individual or organization, specifying health and safety measures as required by the board.<sup>17</sup> Reasons must be given by the board for not approving such plans so that they may be altered to comply with state regulations.<sup>18</sup> Once the plans are considered

and approved, the State Board of Health shall specify the number of tickets which may be sold.<sup>19</sup>

The County Board of Health of the county in which a rock festival is to be held shall inspect the site of the event to determine whether the holder of the permit has complied with the specifications certified by the State Board of Health.<sup>20</sup> Twenty-four hours after notice of non-compliance, if proper corrections are not made the County Board of Health shall notify the sheriff.<sup>21</sup>

In order to establish criteria for implementing the pertinent health and safety regulations, no tickets shall be sold seventy-two hours prior to the commencement of the event, unless approved in the State Board of Health certification, or approved by the local board of health if such additional sale of tickets can be permitted within the regulations as established by the state.<sup>22</sup>

### III. MISCELLANEOUS.

The governing authorities of municipalities shall have the power to adopt reasonable ordinances for the regulation of bowling alleys, skating rinks, pistol or shooting galleries, etc.<sup>23</sup> Further they shall have the power to regulate, prohibit, or suppress billiard tables, pool rooms, fortune tellers, can or knife racks,<sup>24</sup> slot machines and other gambling devices.<sup>25</sup> The governing authorities of municipalities shall further have the power to restrain, prohibit and suppress lotteries,<sup>26</sup> blind tigers, bucket shops, houses of prostitution, disreputable houses, games and gambling houses, dance houses, keno rooms and all kinds of indecency, and to provide for the punishment of persons engaged therein.<sup>27</sup> It shall also be unlawful for the holder of a permit authorizing the sale of beer or

wine at retail to allow any lewd, immoral or improper entertainment, or to permit or suffer gambling upon his licensed premises.<sup>28</sup> In addition, it shall also be unlawful for any person under 18 years of age to be allowed to enter and remain in any pool room or billiard hall.<sup>29</sup>

If any person engages in, or participates in, or performs any tricks, juggling, slight of hand, or any bear baiting, bull fighting, horse racing, cock fighting, or any such show on Sunday, excluding the showing of motion pictures and certain athletic contests,<sup>30</sup> he shall be fined not more than \$50.00.<sup>31</sup>

The governing authorities of municipalities shall have the power to prohibit or regulate the sale or use of fireworks.<sup>32</sup> Outside of the limits of the municipalities, the county board of supervisors is empowered to prohibit or regulate the sale and use of fireworks.<sup>33</sup>

It is the duty of the State Board of Health to investigate the sanitary conditions of all buildings and places of public resort, and to recommend such measures of sanitation for them as it may deem advisable.<sup>34</sup> The Board shall also have the power to require from managers of buildings or places of public resort such sanitary information as may be useful.<sup>35</sup>

In addition, the State Board of Health shall have the power to establish sanitary regulations for any tourist camps or house trailer camps in the state.<sup>36</sup> Present Board of Health regulations include control of water supply, disposal of sewage and refuse, heating, lighting ventilation and screening of said tourist and trailer camps.<sup>37</sup>

There is imposed, levied, and assessed to be collected and paid, a privilege license tax on admission to any amusement within the State of Mississippi.<sup>38</sup>

The term "amusement" refers to all forms of entertainment and amusement including theatres, opera houses, moving picture shows, aquariums, vaudeville amusement parks, athletic contests, skating rinks, race tracks, golf courses, public bathing houses and public dance halls.<sup>39</sup> Gospel Singing, however, is expressly exempted from such taxation,<sup>40</sup> as is any amusement operated solely for the benefit of any religious or charitable organizations, or any high school or grammar school athletic contest.<sup>41</sup> In addition, such tax shall not apply to any county, state or community fair, or to any golf tournament held under the auspices of the Professional Golf Association where the tournament is sponsored by a nonprofit, incorporated association.<sup>42</sup>

Any person conducting any taxable form of amusement as hereinabove described must apply for a permit to conduct such amusements,<sup>43</sup> and said permit may be granted by the State Tax Commission.<sup>44</sup> The permits are not transferable<sup>45</sup> and must be granted separately for each place where the amusements are to be conducted.<sup>46</sup> Penalties are provided for the operation of an amusement without a permit.<sup>47</sup>

## PRIVATE COMMERCIAL AMUSEMENTS

## FOOTNOTES

1. Miss. Code Ann. § 3374-131 (Supp. 1972).
2. Miss. Code Ann. § 2286 (1956)
3. Miss. Code Ann. § 2286, 4 (Supp. 1972).
4. Miss. Code Ann. § 2286, 3 (Supp. 1972).
5. Miss. Code Ann. § 2674-24 (Supp. 1972).
6. Miss. Code Ann. § 2674-23 (Supp. 1972).
7. Miss. Code Ann. § 2370, 5 (Supp. 1972).
8. Miss. Code Ann. § 9696-136 (1952), Miss. Code Ann. § 9057 (Supp. 1972).
9. Miss. Code Ann. § 1866-09 (1956).
10. Id.
11. Id.
12. Miss. Code Ann. § 1866-01 (1956).
13. Miss. Code Ann. § 1866-02 (Supp. 1972).
14. Miss. Code Ann. § 4435-50, 5 (1956).
15. Miss. Code Ann. § 9352 (Supp. 1972).
16. Id.
17. Miss. Code Ann. § 7015-56 (Supp. 1972).
18. Id.
19. Id.
20. Miss. Code Ann. § 7015-58 (Supp. 1972).
21. Id.

22. Miss. Code Ann. § 7015-57 (Supp. 1972).
23. Miss. Code Ann. §§ 3374-131 (Supp. 1972), 2047 (1956), 2190 (1956),  
2192 (1956), 2193 (1956), 2194 (1956), 2195 (1956), 2200 (1956),  
2201 (1956).
26. Miss. Code Ann. §§ 2270 (1956), through 2279 (1956).
27. Miss. Code Ann. § 3374-133 (1956).
28. Miss. Code Ann. § 10223 (1952).
29. Miss. Code Ann. § 2331 (Supp. 1972).
30. Miss. Code Ann. § 2370.5 (Supp. 1972).
31. Miss. Code Ann. § 2370 (Supp. 1972).
32. Miss. Code Ann. § 3374-124 (Supp. 1972), Miss. Code Ann. § 3374-131  
(Supp. 1972).
33. Miss. Code Ann. § 2890 (1956).
34. Miss. Code Ann. § 7029 (Supp. 1972).
35. Id.
36. Miss. Code Ann. § 8269 (Supp. 1972).
37. Miss. State Board of Health, Sanitary Regulations, Volume One, Regulations  
Governing Tourist Camps, Cabin Camps, Tent Camps, Trailer Camps,  
and Similar Establishments, Section 2, 1942.
38. Miss. Code Ann. § 9057 (Supp. 1972).
39. Miss. Code Ann. § 9056 (Supp. 1972).
40. Miss. Code Ann. § 9056.5 (Supp. 1972).
41. Miss. Code Ann. § 9083 (Supp. 1972).
42. Id.



43. Miss. Code Ann. § 9058 (1956).
44. Miss. Code Ann. § 9059 (1956).
45. Miss. Code Ann. § 9062 (1956).
46. Miss. Code Ann. § 9061 (1956).
47. Miss. Code Ann. § 9063 (1956).