

Opinion No. 58-142

June 26, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Fred A. Thompson, Director, Department of Game and Fish, Santa Fe, New Mexico

QUESTION

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May the State Game Commission require a transportation permit to resident license holders to transport game animals, game birds, game fish or parts thereof to a destination point outside the bounds of the State of New Mexico, other than by common carrier?

CONCLUSION

No.

OPINION

ANALYSIS

Standing alone, Section 53-1-11, N.M.S.A., 1953 Comp., might be said to authorize the Commission by duly enacted and promulgated rule or regulation, to provide for the permit in question. Such section provides in part:

"The state game commission is hereby authorized and directed to make such rules and regulations and establish such service as it may deem necessary to carry out all the provisions and purposes of this act, and all other acts relating to game and fish, and in making such rules and regulations and in providing when, to what extent, if at all, and by what means game animals, birds and fish may be hunted, taken, captured, killed, possessed, sold, purchased and **shipped**, the state game and fish commission shall give due regard to the zones of temperatures, and to the distribution, abundance, economic value and breeding habits of such game animals, birds and fish." (Emphasis ours)

However, it is fundamental that the Commission can only act as provided by statute, the above or otherwise. With this in mind, we turn to Section 53-3-1 (5), N.M.S.A., 1953 Comp., 1957 Supp., providing:

"(5) Shipping permits shall be issued by any person authorized to issue hunting licenses upon payment of one dollar and twenty-five cents (\$ 1.25) for each shipping permit. **Such shipping permits must be attached to all shipments of game, birds, animals or fish or any part thereof shipped out of this state by common carrier. No permit shall be required for shipments from and to points within this state or for transporting otherwise than shipments by common carrier.** Shipping permits shall entitle the person whose name appears thereon to ship out of state by common carrier legally taken game, birds or fish or any part thereof. A shipping permit shall be attached to each shipment." (Emphasis ours).

This statute appears to be a specific statute on the subject at hand; certainly, it is far more specific than the general terms of Section 53-1-11.

Section 53-3-1 (5), insofar as your question is concerned, was first enacted as Laws 1927, Chapter 34, Section 1 (5), and is an earlier statute than Section 53-1-11.

We believe the proper interpretation of your question is to follow the earlier statute (§ 53-3-1), since our Supreme Court held in **Levers v. Houston**, 49 N.M. 169, 159 P. 2d 761, that a subsequent statute, treating a subject in general terms, will not be held to impliedly repeal an earlier statute giving specific treatment to the same subject matter, unless that construction is absolutely essential in order to give effect to the subsequent statute. We do not believe it is absolutely essential to hold that § 53-1-11 impliedly repealed § 53-3-1 insofar as this problem is concerned.

The language of Section 53-3-1 (5) requires a shipping permit for a destination outside New Mexico, **but only if the shipment is by common carrier.** Indeed, the subsection goes on to expressly say no permit is required for transporting otherwise than by common carrier.

We hold in the negative.

We express no opinion concerning permits pursuant to Secs. 53-4-6, et seq.