

## Opinion No. 68-07

January 25, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** J. W. Peckumn, Chief Law Enforcement Division Department of Game and Fish  
State Capitol Building Santa Fe, N. M. 87501

### QUESTIONS

Is a justice of the Peace court vested with authority to accept civil action cases brought in the name of the State of New Mexico, Department of Game and Fish, to recover damages and render judgment as provided for in Section 53-2-28 N.M.S.A. 1953 Compilation (1967 Interim Supplement), if the prayer for damages does not exceed \$ 200.00.

### CONCLUSION

Yes.

### OPINION

#### {\*14} ANALYSIS

Section 53-2-28, supra, gives the Director of the Department of Game and Fish and other officers the right to bring civil action in certain cases involving fish and game law violations. Section 53-2-28 provides as follows:

"Civil liability. A. The director of the department of game and fish, or any other officer charged with enforcement of the laws relating to game and fish if so directed by the director, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of, any game quadrupled, bird or fish, or part thereof, {\*15} and recover judgment for the following minimum sums as damage for the taking, killing or injuring:

For each elk \$ 200.00  
For each deer 50.00  
For each antelope 100.00  
For each mountain  
sheep 200.00  
For each mountain  
goat 200.00  
For each barbary  
sheep 200.00  
For each black bear 100.00

For each javelina 50.00  
For each beaver 50.00  
For each bird 10.00  
For each fish 1.00

B. No verdict or judgment recovered by the state in the action shall be for less than the sum fixed in this section. The action for damages may be joined with an action for possession, and recovery had for the possession as well as the damages.

C. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish."

Justice of the Peace courts in New Mexico have jurisdiction over civil actions as provided by Section 36-2-3, N.M.S.A. 1953 Compilation. Section 36-2-3, provides as follows:

"Justices of the peace shall have jurisdiction in all civil actions, in which the debt or sum claimed shall not be in excess of two hundred dollars (\$ 200) exclusive of interest."

It is clear that the sums of money listed under Section 53-2-28 constitute the **minimum** amount of money in a civil liability suit of this nature. From this it must follow that the suit could be brought for an amount of money larger than \$ 200.00. However, the statute vests discretion in the director or other officer bringing the action to set the request for the defendant's liability at any level consonant with the statutory minimum.

None of the minimum sums set forth under Section 53-2-28 supra, exceed \$ 200.00. Therefore, if, in the exercise of his discretion, the officer bringing the suit on behalf of the State of New Mexico should determine that the suit should ask for no more than \$ 200.00, then that suit may be heard by a Justice of the Peace.

By: Paul Lacy

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