

Opinion No. 14-1233

May 14, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Honorable Trinidad C. de Baca, Game and Fish Warden, Santa Fe, New Mexico.

GAME.

Elk imported by the state cannot be destroyed by the game warden or anyone else.

OPINION

{*95} I am in receipt of your letter of the 13th inst. in which you state that certain farmers "operating in the vicinity of Trout Springs, San Miguel County, New Mexico," have been molested by certain {*96} elks placed in that neighborhood by the state authorities through the office of Game and Fish Warden. You say that, in your opinion, the only way to relieve the situation is by destroying these animals, and ask whether in the opinion of this office you are justified in adopting such a course.

It would appear that these animals were purchased and imported to New Mexico by the Game Warden of New Mexico under the provisions of Section 38, Chapter 83 of the Laws of 1909, which authorizes him to expend money in the transportation and distribution of game and fish for propagating purposes. It would appear that the elks in question were imported by the Game Warden at the expense of the state and turned at large above Trout Springs, San Miguel County, New Mexico. It further appears that complaints have been made in regard to depredations committed by these animals, as is evidenced by reference to the appropriation bill of 1912, Section 9, Chapter 83, where it appears that Francisco D. Padilla and Clemente Padilla received the sums of \$ 75.00 and \$ 15.00 respectively for damages committed by the elks above referred to upon their crops and fences. You will observe that these appropriations were required to be paid out of the Game Protection Fund.

While it is a fact that the state has disbursed its money for the importation of these animals, we must stop to recollect that this money was so expended for, presumably, the benefit of the people at large, and whether right or wrong, so far as the importation of these animals is concerned, I am unable to discover any method by which you or your deputies can destroy them any more than anyone else; and Section 11 of Chapter 85 of the Laws of 1912, makes it unlawful to kill any elk; and no game warden can safely disregard a prohibition in the statute which created him.