

Opinion No. 19-2271

May 20, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. Thomas P. Gable, State Game Warden, Santa Fe, New Mexico.

Construction Game and Fish Laws.

OPINION

We are in receipt of your letter of even date, enclosing one from Thos. Herberger of Elizabethtown, New Mexico, making inquiry concerning the construction of the new game laws passed at the recent session of our legislature.

The first inquiry involves the question as to whether it is necessary for a person owning land to procure from the state a permit to protect the game thereon in the event that the land is posted in accordance with section 2433, Code 1915.

This section provides that a person may prevent others from hunting or fishing upon his lands by posting hand bills thereon, and the publication for three weeks in some newspaper of notices warning persons not to hunt or fish within enclosures or pastures. This section has not been repealed in our opinion by section 11 of House Bill No. 321 as amended, passed by the last session of the legislature.

We are of the opinion that the last numbered section is an addition to the game laws which permits the owner or owners of lands through which pass running streams containing fish to protect such fish from fishermen by obtaining the permit therein provided for, and thus making it unnecessary to post the land against hunting or fishing as provided for in section 2433.

Your second inquiry concerns the necessity for those having such a permit to have in their possession a fishing license in order to fish in the stream passing through their own land.

Section 3 of House Bill No. 321 as amended provides among other things, that **no** person shall at any time shoot, hunt, or take in any manner any game animals, or any game birds, of any kind whatsoever, or game fish as herein defined in this state, without first having in his or her possession a license as hereinafter provided for the year in which such shooting, fishing or hunting is done.

Section 11 contains a proviso that no additional license shall be collected from owners of parks or game preserves who have paid for and hold a license as provided for in "Division A" of the Game and Fish Laws.

"Division A" of the Game and Fish Laws refers to the maintenance of parks, enclosures, lakes or bodies of water for the purposes of keeping or propagating game or fish for sale, and evidently does not refer to the enclosures named in section 11 of House Bill No. 321.

Therefore, it is our opinion that a person is required to have a fishing license in addition to the permit provided for in section 11 in order to fish a stream running through his own enclosures.

Your third inquiry is answered by the reply above to the first question, in which we hold that fishermen can be prohibited from fishing in the stream passing through an enclosure where such enclosure is posted against fishing as provided for in section 2433, Code 1915.

On July 11, 1918, Attorney General Harry L. Patton rendered an opinion to J. C. Gilbert of Roswell, New Mexico, in which he held that the owner of land crossed by a non-navigable stream has a right to prevent or forbid fishing therein by other persons.

The provisions of House Bill 321 do not, so far as we are able to determine, alter or modify the law as it stood at the time of the rendition of this opinion, and we therefore adhere to the views therein expressed, and hold as heretofore stated.

We are returning to you herewith the letter of Mr. Herburger and copy of House Bill 321 submitted with your letter.