

## **Opinion No. 19-2354**

September 15, 1919

**BY:** N. D. MEYER, Assistant Attorney General

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

Shipment of Wild Ducks in Interstate Commerce.

### **OPINION**

Answering your request to be advised by this office as to the laws regulating the shipment to foreign states of ducks killed in this State during open season and whether or not transportation of said game may be prevented where the said game is shipped for the purpose of selling the same, we beg to advise:

Ducks are migratory birds and Congress has legislated on the subject as being within its jurisdiction for the reason that such birds migrate through and from one state to another, (Migratory Bird Act, Chapter 145, 37 Stat. 847). Whatever legislation the states enact must be confined within the limits of the federal law.

The federal regulations in regard to the transportation of migratory birds provide that ducks may be transported out of the State where taken during the respective open seasons in that state, in any manner, but not more than the number thereof that may be taken in two days by one person shall be transported by one person in one calendar week out of the state where taken. It is further provided that no migratory birds shall be transported from one state into another contrary to the laws of the state from which they were taken or the state to which they are transported.

Section 10 of Chapter 101 of the Session Laws of 1915 limits the number of ducks that may be killed by one person to twenty and it provides further that not more than twenty ducks shall be had in possession at any one time. Section 2459 of the Codification of 1915 describes the requirements to be complied with when game is presented for transportation. One of these requirements is that a permit shall be attached to the outside of the covering containing the game. This provision enables you to keep a close tab on the number of ducks offered for transportation by any one person and you could readily detect if such person is exceeding the number allowed by law to be taken or shipped by one person.

Section 11 of Chapter 101 of the Session Laws of 1915 makes it a misdemeanor for any person or persons, agent or employee, or any association or corporation to buy or sell any game killed within the State of New Mexico and it is the opinion of the writer that this provision applies to persons who buy or sell such game regardless of whether it is sold within or without the state.

The above is a brief review of the law touching the subject in regard to which you inquire and trust that the same will answer your questions satisfactorily.