

**Opinion No. 37-1759**

September 16, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Elliott S. Barker State Game Warden Santa Fe, New Mexico

{\*158} Under date of September 10th, you request an opinion with respect to whether or not Pueblo or Reservation Indians may be appointed Deputy Game Wardens.

Indians, of course, are not citizens of the State of New Mexico, so long as they remain within their reservations as members of their own tribe or nation. The Constitution does not prohibit the appointment of non-citizens to office.

We find no statute generally prohibiting the appointment of non-citizens to office. However, there is a statute, Sec. 33-4412, Comp. St. 1929, which provides:

"No sheriff of a county, mayor of a city, **or other person authorized by law to appoint** special deputy sheriffs, special constables, marshals, **policemen** or other peace officers in the state of New Mexico, to preserve the public peace and to prevent and quell public disturbances, shall appoint as such special deputy sheriff, special constable, marshal, policeman or other peace officer, any person who shall not be a citizen of the state of New Mexico . . ."

It is the evident purpose of that statute to restrict the appointment of officers having the power of arresting law violators to citizens. The State Game Commission, under Section 5, of Chapter 117, Laws of 1931, appoints deputy game wardens and fixes their duties, and under that statute the commission could fix duties such that it would not make them fall under the category of policemen or peace officers, if it were not for the fact that Chapter 113, of the Laws of 1921, which stands unrepealed, authorizes game wardens and his deputies, and it makes it their duty, to "arrest, with or without warrant, any person whom they have good reason to believe belongs to the class of unnaturalized, foreign born residents" . . . who are prohibited from having in their possession or under their control anywhere in the state any "shotgun or rifle of any kind."

This statute in my opinion gives deputy game wardens the category {\*159} of policemen or peace officers, within the meaning of Section 33-4412 above quoted, and that for that reason non-citizens may not be appointed as such deputies.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.