

## Opinion No. 47-5119

December 29, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Elliott S. Barker, State Game Warden, Santa Fe, New Mexico. Attention /- Mr. Fred A. Thompson, Director of Fisheries.

{\*123} This will acknowledge receipt of your letter of December 22, 1947 in which you request the opinion of this office as to the effect and operation of Section 43-310 and 43-313 of the 1941 Compilation.

Your first inquiry concerning Section 43-310 is whether every person who acts as a guide must procure a license from the State Game Warden.

Section 43-310 provides as follows:

"No person shall directly or indirectly engage or act as guide, as the term is generally understood, for any person or party in hunting protected game without having satisfied the state warden of his reliability and procured from the state warden a license therefor and having the same in his possession while so acting. No guide license shall be granted except to a bona fide resident of this state."

The language of the statute is clear. **Every person who acts as a guide, either directly or indirectly**, must obtain a license from the State Game Warden.

Your second inquiry, concerning Section 43-313, is whether a person who is licensed to take minnows and nongame fish to sell as bait, may hire others to do his fishing for him when procuring a license for them.

Sections 43-313 and 43-314 of the 1941 Compilation set out the procedure to be followed in obtaining a license to take minnows and nongame fish to sell as bait.

You will note that these sections are applicable only to persons who wish to take such nongame fish and **sell** them.

These sections are not applicable to persons who are hired on a salary basis by a licensee to fish for him. Consequently, those persons would not have to obtain a license.

Of course, if those persons, who are hired by a licensee, work on a Commission basis or on a "split-the-profit" basis, or on some other basis whereby their gain is based directly on the profit made from the sale of bait, then they must all be licensed.

Trusting the above sufficiently answers your inquiry, I am

By WILLIAM R. FEDERICI,

Asst. Atty. General