

Opinion No. 48-5135

March 5, 1948

BY: C. C. McCULLOH, Attorney General

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

{*135} We are in receipt of your letter of February 20th in which you ask whether the Game Commission would have authority to prohibit the carrying of firearms in the hunting areas for a week preceding the opening of the big game season.

You state that it is the practice of many hunters, both resident and non-resident, to go into the hunting areas and establish camp several days before the opening of the big game season.

You also state that hunters are often seen in the woods carrying firearms preceding the opening of the hunting season, that often shots are heard but that it is very difficult to find hunters with game, although it is known to the Game Commission that considerable game {*136} is killed preceding the opening of the season.

You state that it is because of this practice the Game Commission wishes to pass a regulation prohibiting the carrying of firearms in the hunting areas before the start of the big game season.

Section 43-202 of the 1941 Compilation provides, in part:

"The game animals * * * herein defined shall be protected, and hunting, taking, capturing, killing or possession, or attempt to hunt, take, capture or kill of any and all species named herein shall be regulated by the State Game Commission * * *."

It is seen that under this section the Game Commission is given the authority to make regulations both to protect game animals and to regulate the hunting of such animals.

Thus it appears that the Game Commission could promulgate a rule prohibiting the carrying of firearms in hunting areas prior to the opening of the season, since such regulation would be one designed to protect game animals and to regulate the hunting of such animals.

Your attention is also directed to Section 43-101 of the 1941 Compilation which provides as follows:

"It is the purpose of this act and the policy of the state of New Mexico to provide an adequate and flexible system for the protection of the game and fish of New Mexico and for their use and development for public recreation and food supply, and to provide for their propagation, planting, protection, regulation and conservation to the extent

necessary to provide and maintain an adequate supply of game and fish within the State of New Mexico."

By Section 43-111, as amended by Chapter 53, Laws of 1947

"The state game commission is hereby authorized and directed to make such rules and regulations * * * as it may deem necessary to carry out all of the provisions and purposes of this act. * * *"

Since the purpose of the act governing game and fish is to protect the game and fish and develop such game and fish for public recreation, etc., and since the Game Commission is authorized to make rules to carry out the purpose of the act, it appears to me that under these sections the Game Commission would also have the power to promulgate the proposed regulation.

In view of the foregoing, it is my opinion that the State Game Commission has the authority to promulgate a regulation prohibiting any person from carrying a firearm in hunting country for a period of time prior to the big game season.

By ROBERT W. WARD,

Asst. Atty. General