

Opinion No. 53-5641

January 19, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Elliott S. Barker State Game Warden Department of Game and Fish Santa Fe, New Mexico

{*25} On January 14th you addressed an inquiry to this office concerning the penalty provisions applicable to Ch. 185 of the Session Laws of 1951. Sec. 3, Ch. 185 of the Laws of 1951 provides as follows:

"In the event any person, contrary to the provisions of Section 1 of this Act, shall injure another, the State Game Warden shall withhold all hunting license privileges for a period of ten years, and if any such accident results in the death of another person, all hunting license {*26} privileges shall be withheld forever from the person causing such death."

This section provides a penalty to be assessed against a person who violates sections 1 and 2. This penalty is exclusive to your office and no further penalty can be imposed by you; however, a district attorney, sheriff or any other person charged with the duty of enforcing the general criminal statutes may file a criminal action against the offender under the general laws. For example, in the event a person is killed while hunting and the facts will warrant prosecution under the manslaughter section the district attorney or sheriff has the duty to file a criminal action against the offender. There are other criminal offenses provided which could, conceivably, be made applicable to a person killing or wounding another while hunting.

It is the opinion of this office that neither § 41-105 nor § 41-106 N.M.S.A., 1951 Compilation applies as a penalty under Ch. 185 of the 1951 Session Laws of the State of New Mexico.

It is further the opinion of this office that the penalty provided in the act itself as set out above is exclusive and unless the facts warrant an information being filed under other criminal statutes (manslaughter, murder, assault and battery, etc.), the penalty as set out is the only penalty which can be imposed. You, as State Game Warden, together with your Deputy Game Wardens, would be authorized under Sec. 3, as set out above, to withhold a hunting license in the event a person is convicted of the violation of Chapter 185. We do not believe that you have any discretion in the matter of withholding a license from a person convicted and that such deprivation of license is mandatory under the statute.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General