

Opinion No. 55-6154

May 6, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Homer C. Pickens, Director, Department of Game and Fish, Santa Fe, New Mexico

In your letter of April 5, 1955 you ask our opinion as to the jurisdiction of your Department over dressed game birds produced out of state and imported into New Mexico for food purposes.

A reading of the entire chapter with respect to fish and game, and particularly § 53-1-1 of the 1953 Compilation, leads us to the conclusion that with but a few exceptions, it was the intention of the Legislature to provide your Department with the control of fish and game in its wild and natural state only. We do not feel that the importation of dressed game birds from other states comes within the exceptions, and that therefore such items are without your jurisdiction.

It is, however, incumbent upon the possessor of such dressed game birds to satisfactorily prove that they have been imported from without the state. Your attention is called to § 53-2-2 and 63-3-27 of the 1953 Compilation, relating to presumption of law violations in the possession of game and fish.

You further request our opinion as to your jurisdiction over the importation and sales of live game birds or their eggs imported for retail sale to game breeders.

Your attention is directed to § 53-3-26 of the 1953 Compilation. This section requires the person importing any live animals, birds or fish into this State to obtain a permit from the Director. Fertile eggs come within the classification of live birds. It exempts domesticated animals or domesticated fowl, and the burden of proving that any such birds if within the birds declared to be game birds, were domesticated would fall upon the person desiring to import them without a permit.

By: W. R. Kegel,

Assistant Attorney General