

## Opinion No. 59-55

June 3, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** State Game Commission P. O. Box 2060 Santa Fe, New Mexico. Attention: Mr. Fred A. Thompson, Director

Director of the Department of Game and Fish must charge statutory fee for resident hunting licenses issued for permission to hunt antelope on deeded property or property held under grazing lease.

### OPINION

{\*84} This is written in reply to your recent request for an opinion on the following question:

Does House Bill No. 368, Chapter 143, Laws of 1959, "Providing that the Director of the Department of Game and Fish is authorized to issue resident licenses to owner or lessee for the hunting of antelope in consideration for the permission to hunt antelope on deeded property or property held under a grazing lease", authorize the Director to issue such licenses free of charge?

It is my opinion that it does not and that the statutory fee must be charged and collected by the Director.

Section 53-3-1, N.M.S.A., 1953 Compilation, Pocket Supplement, insofar as pertinent here, is as follows:

". . . No person shall at any time shoot, hunt, kill, injure, or take in any manner, any game animal, game bird or game fish **without paying for** and having in possession a license as herein provided for the year in which such shooting, hunting, fishing or taking is done . . ." (Emphasis supplied)

Section 53-3-6, N.M.S.A., 1953 Compilation, Pocket Supplement, provided a statutory fee charge for antelope as well as other game and is prefaced by the following language:

". . . The Director and license collectors **shall charge** and **collect** the following fees: . . . ." (Emphasis ours)

The Act under consideration does not expressly repeal either of the foregoing statutes and repeal by implication is not favored. **Veterans' Foreign Wars, Ledbetter-Mc-Reynolds Post No. 3015 v. Hull**, 51 N.M. 478, 188 P. 2d 334:

"Repeal of statute by implication will not be indulged unless the later act is so repugnant to the earlier as to render the repugnancy or conflict between them irreconcilable, and a court will if possible adopt that conclusion which under the particular circumstances will permit both laws to be operative."

**Stokes v. N.M. State Board of Education**, 55 N.M. 213, 230 P. 2d 989:

"Courts do not look with favor on implied repeals. They seek to avoid repeals by implication by resort to any reasonable and fair interpretation under which all sections of a statute can stand together. *State v. Davisson*, 1923, 28 N.M. 653, 217 P. 240."

Under Regulation No. 392, "Establishing 1959 seasons on elk, antelope, and Barbary sheep" by Section III is prescribed the area, season dates, bag limits, and limits the number of licenses to be issued. Section V prescribes the method of application and public drawing. It would, therefore, appear that the Act under herein question would authorize the Director to issue to an owner or lessee resident licenses in consideration for the permission for others to hunt antelope on deeded or leased property but that the statutory { \*85 } fee must be charged and collected.

Upon a reading of the Act, H.B. 368, Chapter 143, Laws of 1959, other questions arise which I feel should be set out here.

Assuming the Game Commission desires, as a matter of policy, that the authority granted by the statute be exercised:

1. Should the agreements reached be uniform and upon an acreage basis or some other basis?
2. What limitations, if any, are to be put upon the owner or lessee as to the use of the resident antelope hunting licenses issued under this act?
3. May the owner sell or give licenses thus acquired to others or may he personally use each of such licenses?

Licenses presently are not transferable under Regulation No. 392, but the State Game Commission has broad powers to regulate hunting and fishing under Section 53-2-1, N.M.S.A., 1953 Compilation.

The above questions appear to me to require policy decisions by the State Game Commission.

By Hilton A. Dickson, Jr.

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