

## **Opinion No. 62-135**

October 26, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General J. E. Gallegos, Assistant Attorney General

**TO:** Mr. Walter R. Kegel, District Attorney, County Court House, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Can the State Game Commission lawfully require that one who hunts in the Jicarilla Reservation and Tierra Amarilla Grant obtain a \$ 2.00 special season deer tag?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

By regulation the State Game Commission has declared the lands within the Jicarilla Reservation and the Tierra Amarilla Grant to be an area where two deer of either sex may be taken during the 1962 hunting season. Those taking part in that hunt are required to have both a valid big game license and a \$ 2.00 special season deer tag.

Section 53-3-1, N.M.S.A., 1953 Compilation provides in part that: "(2) A general hunting license shall entitle the person named therein to hunt deer, bear, squirrel and wild turkey and game birds during the open season therefor." The inquiry here is whether the privilege conferred by the regular license is infringed by requiring the special tag.

The hunting privilege granted by the regular license can be exercised only within the bounds of the State Game Commission regulations. Section 53-2-7, N.M.S.A., 1953. It is solely up to that body to say where and when a licensed hunter will hunt and what and how many game animals he will take. Section 53 - 2 - 1, N.M.S.A., 1953. On set season dates the Commission has determined that the regular license holder can hunt deer in most of the State. That season and that area, in effect, defines the extent of the privilege to hunt deer conferred by the regular license.

There are areas not open to the regularly licensed deer hunter. For example, a portion of south-eastern New Mexico is entirely closed to deer hunting. Then the Commission has seen fit to set aside for deer hunts of a special nature certain areas of the state.

These are the areas we are dealing with, where two deer can be taken, and the after-regular-season areas, e.g., Gila Wilderness, San Andres-Organ.

The Commission, by its regulatory power, has made the special hunts open to those who hold a regular license and in addition receive special permission to take part. This clearly takes nothing away from the regular license holders. It may give him an extra privilege if he gets the permission. The permission is acquired by purchasing a special tag. Section 53-3-6, N.M.S.A., 1953 in part says:

"Provided that a \$ 2.00 special season deer tag shall be required for any hunter when special permission is required in addition to a valid license."

Thus, we are of the opinion that under the applicable law the State Game Commission can require that those hunting in the areas in question obtain a \$ 2.00 special season deer tag in addition to the regular license.