

## Opinion No. 65-79

May 24, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Frank Bachicha, Jr., Assistant Attorney General

**TO:** Ladd S. Gordon, Director, Department of Game and Fish, State Capitol, Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. Is a justice of the Peace acting within his jurisdiction when he revokes a hunting or fishing license as a penalty where a defendant was charged under Section 53-2-7, N.M.S.A., 1953 Compilation, and found guilty of violating the game laws?
2. Is the authority to revoke licenses, certificates or permits for violation of the game laws vested only in the Director, as provided in Section 53-3-28, N.M.S.A., 1953 Compilation?

#### CONCLUSION

1. No.
2. Yes.

### OPINION

#### {\*139} ANALYSIS

By Section 53-2-8, N.M.S.A., 1953 Compilation (P.S.), amended by Laws 1963, Chapter 213, Section 1, justices of the peace have been given "jurisdiction in all cases arising under Chapter 53, New Mexico Statutes Annotated, 1953 Compilation, and regulations promulgated by the state game commission."

Most of the penalty provisions of the statutes relating to game and fish were repealed by Laws 1963, Ch. 213, § 8 (Sections 53-2-10, 53-2-14, 53-2-17, 53-2-19, 53-2-33, 53-2-38, 53-3-5.5 and 53-3-22) or amended by Laws 1963, Ch. 213 §§ 2, 3, 4, and 7 (Sections 53-2-9, 53-3-3, 53-3-26 and 53-5-10). At the present time it can be said that only Section 53-2-9, N.M.S.A., 1953 Compilation (P.S.) exists as the general penalty provision concerning violation of game and fish laws and regulations. This Section is quoted as follows:

"53-2-9. Violation of game and fish laws or regulations -- Penalty. -- Any person who violates or fails to comply with regulations promulgated by the state game commission or any of the provisions of Chapter 53, New Mexico Statutes Annotated, 1953 Compilation, shall be fined not less than twenty - five dollars (\$ 25.00) nor more than three hundred dollars (\$ 300), or imprisoned not more than ninety (90) days, or both."

Therefore, a defendant found guilty of violating Section 53-2-7, N.M.S.A., 1953 Compilation, or any other statute or regulation pertaining to game and fish law for that matter, would be subject to punishment as provided in the above quoted Section. However, there is a further punishment which could be imposed upon an erring defendant under Section 53-3-28, N.M.S.A., 1953 Compilation, viz., revocation of his license, certificate or permit. Interestingly enough though, the statute is clear in placing such power of revocation in the game warden (now the Director, who assumed all powers of the warden by virtue of Section 53-1-5.1, N.M.S.A., 1953 Compilation) in the following language:

"53-3-28. Revocation of license, certificate or permit for violation of law. -- If the holder of any license, certificate or permit shall persistently or flagrantly or knowingly violate or countenance the violation *{\*140}* of any of the provisions of the game laws, such license, certificate or permit **shall be revoked by the game warden after due notice given of the alleged violation and an opportunity affected to appear and show cause against the same.**" (Emphasis supplied)

The above statute is not open to construction with regard to the power to revoke and the official who is to effect the same, since it is clear and unambiguous in this respect. If the legislature had intended that justices of the peace have the power to revoke licenses, certificates or permits, it certainly would have so stated. On the contrary, the granting of a license being purely an administrative act upon a finding of the existence of certain facts, the revocation of one would appear to also constitute an administrative act. The State Game and Fish Commission invested by the legislature of this state with the authority and power to preserve our game has, in fact, been given the power to act through one of its employees, viz., the director, in revoking a license, certificate or permit. In **State v. Hefferman**, 41 N.M. 219, 67 P.2d 240, our Supreme Court said:

"The Legislature for the protection of the game and fish of New Mexico and for the purpose of regulating their use and enjoyment, for public recreation and food supply . . . , has vested in the State Game Commission, an administrative branch of the executive department, the administration of our game and fish, and to this commission is intrusted the duty of safeguarding this property in the interest of the public. . . ."

It is our opinion that the revocation of a license, certificate or permit held by one who "shall persistently or flagrantly or knowingly violate or countenance the violation of any of the provisions of the game laws" is consistent with the power of the state to protect the property of its citizens.

Our answer to your Question No. 1 above must be, therefore, that the revocation of a hunting or fishing license is not within the jurisdiction of a justice of the peace, but that such power rests exclusively with the director of the department of game and fish of this state, as an administrative matter. This conclusion also provides the answer to your Question No. 2 in the affirmative.