Opinion No. 15-1703

December 24, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Aldo Leopold, Secretary, Albuquerque Game Protective Association, Albuquerque, New Mexico.

Interpretation of provisions of game law.

OPINION

*{*273}* I have received your letter of the 22nd inst. and, as requested, I have carefully reconsidered the question of the effect to be given to the provisions of Section 12 of the game law, as amended by Section 7 of Chapter 101 of the Laws of 1915, but I am unable to agree with your view of the meaning of the law. The only way to get any final and authoritative decision upon such a question, as to which there seems to be some differences of opinion, is to take the matter into the courts and get a judicial ruling as to what the statute means. Following my usual custom, I answered a letter of inquiry from a resident of Las Cruces who was led to ask my opinion on account of certain Indians who live at a place south of Las Cruces, who had been told that they must have a hunting license before they could go out in a body to make a rabbit drive, from the results of which they annually provide themselves a large part of the meat used during the winter, and I endeavored to state to him what I thought the condition of the law is.

There is no one in New Mexico who has a stronger personal desire for the protection and preservation of the game of the state than I, but I cannot permit that feeling to influence me to construe a statute as having a different meaning from what my judgment tells me that the language used really means.

You say in your letter that at the time the law was passed last March, this section was intentionally worded so as to make a license necessary for any and all kinds of hunting, and especially to prevent the use of rabbit hunting as an excuse for the wilful disregard of license requirements. The construction which you put upon the statute has been the subject of discussion already in different parts of the state, and has evoked expressions of violent indignation, one of which was from a member of the legislature who actually voted for the passage of the bill. If your construction is correct, he at least had no idea that such a meaning would be put upon the act or he never would have voted for it.

The language used in the sections spoken of, if taken by itself without regard to anything else in the law, might be susceptible of such a construction as you put upon it. It is as follows:

"No person shall at any time shoot, hunt or take in any manner any wild animals or birds or game fish as herein defined in this state without first having in his or her possession a

hunting license as hereinafter provided for the year in which such shooting, fishing or hunting is done."

The phrase "any wild animals," taken alone, would include rabbits, coyotes, wolves, skunks, wild cats, mountain lions and bear, none of which are objects of protection by the statute, and this is *{*274}* evidently the view which you take. It is possible that you might find some court to agree with you. My opinion is not final and conclusive and would have weight with any court only as the opinion of any other member of the bar might have.

I think that "any wild animals" must be considered in connection with the qualifying clause, "as herein defined," and must not be considered as embracing all kinds of wild animals, including those, the extermination of which would be conducive to the public welfare. There are no wild animals defined in the act except those enumerated in Sections 8, 9, 11 and 15, and my opinion is that the general language about "any wild animals" must be limited to those which are defined or mentioned in the act itself. It never could have been the object of the legislature to restrict in any way the pursuit and destruction of animals which are destructive of property, and the preservation of which no one can personally desire, and yet if you are right as to the meaning of this law, that is just what would be the result. The poor farmer, struggling for an existence on a homestead claim, to whom the expenditure of a dollar and a half is a serious outlay, would be prohibited from hunting down and killing a marauding coyote or fox which steals his chickens unless he expended that sum of money for a hunting license.

It is inconceivable if the amendment which was made last March had declared, in unmistakable language, that no person should, at any time, shoot, hunt or take in any manner any fox, coyote, wild cat, skunk, weasel, lynx, mountain lion or wolf without having a hunting license, that the legislature would have passed it, and yet that is what your construction makes the language mean. I cannot agree that the legislature ever had any such intention or that it has used language in the act which would effectuate any such intention.

The practical difficulties you point out as to the enforcement of the law are those which always attend the efficient operation of any law of this kind, and there will always be evasions and disregard of laws of this kind just as there are evasions and disregard of any statutes which create offenses and declare the punishment for them.

By the constitution of the state it is required that the subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed, except general appropriation bills and bills for the codification or revision of the laws, and it is provided that if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void. When we refer back to the title of our game law, which is Chapter 85 of the Laws of 1912, we find that the title is "An Act for the Protection of Game and Fish, Creating a Department of Game and Fish, Providing for the Appointment of a Game and Fish Warden, and Prescribing his Duties." An overcritical person might say that the very title indicates several different

subjects, but this would be incorrect as the real object is the protection of the game and fish, and the other things enumerated in the title are merely incidental to that main object. The construction which you think should be given to the amended Section *{*275}* 12 of that act, would transform the statute practically into an act for the protection of animals, which cannot be included under the name of game. This is such a departure from the object indicated in the title of the act that such a construction, if the language really calls for it, would make that portion of the act void under the provisions of Section 16 of Article IV of the constitution.