

Opinion No. 15-1698

December 18, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. S. P. Ascarate, Las Cruces, N. M.

No license required for hunting rabbits.

OPINION

{*268} I have today received your letter of the 16th inst. in which you say that an old Indian from Tortugas, situated below the State College, has come to you and said that the Indians were not permitted to hunt rabbits unless they should take out hunting licenses. There is no lawful authority by which anyone can be required to pay for a hunting license in order to hunt and kill rabbits, and you can say to the Indians that there is no need for them to buy licenses in order to kill rabbits in their accustomed manner which you describe in your letter as having been their method from time immemorial, by which the whole village turns out, the men and boys armed with clubs, and forming a large circle, they close in, and as the circle lessens in diameter, the rabbits attempt to escape and are killed. They must, however, be careful not to kill in the course of this drive, any of the game which is protected by law, such as ducks, quail, grouse, turkeys and doves, as that would subject them to punishment under the statute. Rabbits are not in any way protected by law from being killed.

The impression that any such license could be required for a person to kill rabbits has grown out of an injudicious statutory provision enacted by the last legislature, which will be found in Section 7 of Chapter 101 of the Laws of 1915. That section prohibits all persons from shooting, hunting or taking in any manner any wild animals or birds without first having a hunting license, and then says "The presence of any person in any open field, prairie, or forest, whether enclosed or not, with traps, gun or other weapon for hunting, without having in possession a proper hunting license as herein provided, shall be prima facie evidence of the violation of this section." Some of the game wardens have, in their attempt to discharge their duties, assumed that the mere carrying of a gun was sufficient to justify a complaint against the person carrying it, and his consequent arrest, and while the wording of the statute may bear out such a construction, yet I think it is unjustifiable to arrest a man merely for carrying a gun without other additional evidence of his intention to violate the law.