

Opinion No. 23-3721

July 25, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Mr. L. C. Petree, Chief Deputy to State Game and Fish Warden.

"Enclosures or Pastures" and "Parks and Lakes," under the Game and Fish Laws are Distinguishable. In the Latter, Game and Fish Must be Held and Confined.

OPINION

{*72} Your request follows:

"Your opinion is respectfully requested as to what may be lawfully licensed and created a licensed park, licensed lake, or private game preserve under the provisions of Article II, "Division A," of the State Game and Fish Laws. In other words, may a license be granted to the holder of a tract of land in which the land is ordinarily fenced to confine cattle or horses, and not fenced so as to prevent the egress and ingress of deer, elk, antelope, or other game animals; or can a private lake license be granted to the owner of a lake receiving its water supply from a public stream unless the inlets and outlets are effectively screened?

"Is the meaning of the words "Licensed Park," "Licensed Game Preserve" or "Licensed Private Game Preserve," one and the same as to the intents and purposes of this Act?

"In the event that a licensed park, lake, or game preserve must be fenced so as to retain the game therein, and prevent the entrance of other wild game, are licenses heretofore issued and paid for, creating such licensed parks, private game preserves, etc., where it is patent that these physical conditions have not been and are not being met, revocable; and if so, under what terms or conditions?"

Ordinary Pasture

Our law on the subject under consideration appears to be divided into two parts, -- the first involves game preserves in the nature of ordinary "enclosures or pastures." -- Sec. 2433; Sec. 11, Chap. 133, S. L. 1919.

Under this subdivision it is not contemplated that animals are to be held or confined within such pastures, but that the same may afford such animals a limited retreat or refuge. It gives the licensee no right to sell game or fish from such enclosure and, in {*73} fact, no right other than to protect the same from trespassing hunters or fishermen.

Parks and Lakes

Under the second subdivision, provision is made for the licensing of game preserves in the nature of "parks and lakes." -- Secs. 2482 to 2502, incl., Code 1915, as amended by Secs. 18 and 19, Chap. 101, S. L. 1915, and Sec. 10, Chap. 133, S. L. 1919.

"Park," as usually defined in such cases, is "A piece of ground enclosed, and stored with beasts of the chase." The park or enclosure contemplated by this division is one which will "keep, hold and confine" the fish and game therein. For violation of this law, the park or lake may be abated as a public nuisance and the game or fish "liberated." Unless they were "kept, held and confined," they could not be "liberated."

Only such game and fish as are "held and confined" in a licensed park or lake are deemed to be the property of the licensee. -- Sec. 18, Chap. 101, S. L. 1915.

It shall be the duty of the proprietor to adopt and use such screens or other appliances as the Warden may direct to prevent the fish in public waters from entering a licensed lake. -- Sec. 2496, Code of 1915.

An enclosure not reasonably sufficient to prevent game animals from passing into and out of the same is not a park or enclosure contemplated by this division. As to lakes, the law contemplates a body of water in the nature of a lake safeguarded to the extent that fish may not pass out of and into it to and from public streams. They must be held and confined. To have any semblance of ownership in game or fish one must obtain possession of them. That may not be done by the building of the ordinary fence to hold and confine horses and cattle.

Except as otherwise distinguished herein, licensed park, licensed game preserve and licensed private game preserve are used synonymously.

As to the question of revoking license, the Game Commission may make and enforce adequate rules and regulations for that and any other purposes, within the law, for the protection of game and fish in New Mexico. -- Secs. 1, 2 and 6, Chap. 35, S. L. 1921.