

Opinion No. 34-818

October 17, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Elliott S. Barker, State Game Warden, Santa Fe, New Mexico.

{*159} In your letter of October 15, 1934 you enclose a mimeographed letter sent out by Mr. Sid West regarding hunting on the Shelton Ranch in Otero County, New Mexico. The records of the State Land Office show that there are included in this ranch more than 18,000 acres of state land leased to Mr. Shelton for grazing purposes only. In the notice above referred to an offer is made to furnish guests with sleeping quarters, meals, saddle horses and guides at a price of \$ 15.00 for the first day and \$ 10.00 for each additional day. A charge of \$ 10.00 for a period of three days is made for the hunting privilege alone.

You ask our opinion upon two questions:

{*160} 1. Does the lessee in this case have the right to post the land against hunting?

2. Does the lessee have the right to make a charge for hunting privileges on state leased land?

In answer to your first question I call your attention to Section 57-215 of the 1929 Code. No exception is made in this section of lands leased from the state. It may be that under the broad, general powers of the commissioner of public lands conferred by Section 2, Article XIII of the State Constitution and Sections 132-101 et seq. of the 1929 Code, as interpreted by our Supreme Court in *State ex rel Otto vs. Field*, 31 N.M. 120, 241 P. 1027, the commissioner would have power to insert a provision in the lease reserving to the public the right to hunt and fish on said lands. However, he has not done so in the present case. It is true that the land was leased for grazing purposes only but ordinarily the lessee would have the right to protect the leased premises against trespassers and, indeed, he is required so to do by Section 132-151 of the 1929 Code. Hunting would in a great many cases interfere with the use of the land for grazing purposes and, in the absence of statute, rule or regulation to the contrary, it is my opinion that the lessee of state lands for grazing purposes has the right to post such land against hunting.

In answering your second question we should first consider the provisions of the lease itself. It will be noted that the land is leased "for grazing purposes only." We also find the following provision: "and it is hereby covenanted and agreed by both parties hereto, that this lease is made subject to all the provisions and requirements applicable hereto, which are to be found in various acts of the Legislature of New Mexico, the same as though they were fully herein set forth, and said Laws so far as applicable to this lease, are to be taken as a part hereof."

Under Section 132-149 of the 1929 Code, "any lessee who shall use the lands for any purpose other than that specified in the lease, or purposes incident thereto, shall be guilty of a misdemeanor, etc." In the present case it is proposed to use the lands for purposes other than grazing and such use, in my opinion, would subject the lessee to cancellation of his lease under the terms of Section 132-121, 1929 Code and to prosecution under Section 132-149, 1929 Code.

In addition to the above, under the facts stated in your letter, the proposed sale of game (for it really amounts to that) without a license would probably be a violation of Section 57-301, 1929 Code which provides as follows:

"No person shall have or maintain any park, enclosure, lake or body of water for the purpose of keeping or propagating therein any game or game fish for sale, nor shall any living game or game fish from such park, enclosure, lake or body of water be sold or offered for sale, unless the owner, proprietor or lessee thereof shall first procure a license as hereinafter provided."

For all of the reasons above stated I am of the opinion that your second question should be answered in the negative.

By: QUINCY D. ADAMS,

Asst. Attorney General