

Opinion No. 63-38-L
R-208
March 11, 1963

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REQUESTED BY: R. J. SMITH
Director Game & Fish Department

OPINION BY: ROBERT W. PICKRELL
The Attorney General

- QUESTIONS:
1. Which State Agency has jurisdiction over feral pigs and feral burros?
 2. Can feral burros and feral pigs be killed legally by licensed hunters?
 3. Can feral burros and feral pigs be legally knowingly and intentionally killed?

- ANSWERS:
1. Livestock Sanitary Board.
 2. No.
 3. No.

The jurisdiction over burros and pigs is delegated by A.R.S. to the Livestock Sanitary Board. The dictionary states that a burro is a donkey and that a donkey is an ass; consequently, it logically follows that a burro is an ass. Webster's New International Dictionary, Second Edition, Unabridged (1959) at pp. 360 and 770. Under A.R.S. § 24-104(A)(1) and (A)(4) "The Livestock Sanitary Board shall . . . protect the livestock industry from theft and . . . Assist in the prosecution of persons charged with violation of the livestock laws."

"Livestock" means neat animals, horses, mules and asses." Therefore, since a burro is an ass, the Livestock Sanitary Board, in conjunction with prosecuting authorities, has jurisdiction in respect to theft of burros and general prosecution of persons charged with violation of the livestock laws.

As for pigs, swine are included in the offense of unlawfully killing specified animals owned by another. A.R.S. § 24-246 states:

"A. A person who feloniously or knowingly kills or sells livestock, sheep goats or swine, the ownership of which is known or unknown, or who wilfully and feloniously purchases livestock, sheep, goats or swine, the ownership of which is known or unknown, from a person not having

the lawful right to sell or dispose of such animals, is guilty of a felony."

Because swine is synonymous with pig, § 24-246 along with § 24-104(A)(4) grants the Livestock Sanitary Board jurisdiction to assist in the prosecution of persons charged with the unlawful killing of pigs.

The question remains however, as to whether feral burros and feral pigs are also within the jurisdiction of the Livestock Sanitary Board. The only mention of feral animals in our Code is § 17-101(B)(5) which defines predatory animals as follows:

"Predatory animals are foxes, skunks, mountain lions, coyotes, wolves, jaguars, weasels, bobcats, ocelots, porcupines and feral house cats." (Emphasis added).

The express inclusion of feral house cats within the scope of wildlife and total absence of any other reference in the Code to a feral animal, and specifically the category of "predatory animals," indicates that the Legislature intended that wildlife not include any feral animal except feral house cats. While § 17-101(A)(17) states that "wildlife" means all wild mammals, "wild" means wild from the inception of the animal and therefore does not include a feral animal. Consequently, the Game and Fish Department has no authority over feral burros or feral pigs. §§ 17-102 and 17-201. Other than the Game and Fish Department our office knows of no other State Agency besides the Livestock Sanitary Board which could even remotely have specified authority over feral burros and feral pigs. Therefore, the answer to Question Number 1 is that the Livestock Sanitary Board has jurisdiction over feral burros and feral pigs. The Board in Criminal violations should work in conjunction with the respective county attorney involved in the violation. A.R.S. §§ 11-532 and 24-104(A)(4).

Concerning Question Number 2, no licensed hunter can kill feral burros or feral pigs since (1) neither of these types of animals are wildlife (§ 17-101) and (2) because a hunter's license entitles the holder only to take wildlife, (§ 17-331).

Because the estray laws pertain only to the sale of stray livestock, sheep or swine, § 24-246(B) does not exempt application of § 24-246 in respect to unlawful killing of feral burros or feral pigs. See A.R.S. §§ 24-311 to 314. It must be emphasized however, that § 24-246 pertains to violations on property within

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the jurisdiction of the state and not the federal government.

Therefore, this office concludes that it is not lawful to kill feloniously or knowingly feral burros or feral pigs. A.R.S. § 24-246(A).


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