

January 16, 1936

Mr. S. L. Lewis
State Game Warden
Arizona Game & Fish Commission
Phoenix, Arizona

Dear Mr. Lewis:

Referring to your letter of December 30, 1935, wherein you request an opinion from the Attorney General as to whether you may legally sell the Bison herd which is under the control of your department.

An examination of our statutory provisions is necessary for a determination of your question.

Section 2, Chapter 33, Laws of 1933, provides as follows:

"When it is proven to the satisfaction of the commission that game birds or game animals or fur bearing animals are materially destroying property, or otherwise becoming a nuisance, or the sexes are not balanced properly, or the natural food supply is insufficient or that hunting or trapping in addition to the regular open season, provided by this and other acts heretofore, may be permitted without jeopardizing the future supply of game or fur bearing animals of any kind in any section of the state, the commission may at any time remove or have removed such animals or birds from that section, or may direct or authorize the taking of such birds or animals, or grant an extension of the open season, or permit additional hunting or trapping, under such rules governing seasons, bag limits, methods of taking and other regulations as the case may require, regardless of protection afforded or open seasons or bag limits fixed by this and other acts heretofore."

It will be noted that said section does not authorize the Commission to sell any of the game birds, game animals or fur bearing animals "when it is proven to the satisfaction of the Commission that they are materially destroying property, or

otherwise becoming a nuisance, or the sexes are not balanced properly, or that the natural food supply is insufficient", but said section only authorizes the Commission to remove the birds or animals to another section or to declare an open season upon the same.

Section 33, Chapter 84, Laws of 1920, authorizes the Commission to sell other than the edible parts of any game animal or bird seized under the provisions of the act. No provision is made for the sale of any game bird, game animal, or fur bearing animal, by the Commission.

Section 40, Chapter 84, Laws of 1920, authorizes the Commission to issue permits to kill or capture alive any species of animals or birds which are seriously injurious to agricultural or other interests in any particular community, and further authorizes the granting of permits to any person to collect and capture such animals or birds for scientific and other authorized purposes.

It is the general rule that wild game is owned by the State for the benefit of all its people, and that the legislature may authorize the disposal of the same in any manner which is for the benefit of the people as a whole. (27 C. J., Page 942) It is a general rule that executive and administrative officers, boards, departments and commissions have no powers beyond those granted by express provision or necessary implication by legislative enactment. (59 C. J., Sec. 118, Page 111) It is also a general rule that property belonging to a sovereign state can not be sold by its officers unless the legislature has expressly authorized such officers to sell the same. (59 C. J., Sec. 276, Page 184)

A review of the provisions of our Fish and Game statutes reveals that the legislature has granted broad powers to the State Game and Fish Commission in supervising and administering the State's fish and game, but a careful study of these provisions fails to reveal either an express or implied power to sell any wild game of the State.

For the reasons and authorities cited, it is the opinion of the Attorney General that the Commission does not have the power or authority to sell the State's Bison herd.

Mr. E. L. Lewis

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Yours very truly,

JOHN L. SULLIVAN
Attorney General

ELMER C. COKER
Assistant Attorney
General

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