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ARIZONA ATTORNEY GENERAL

February 15, 1939.

Mr. William H. Sawtelle,
State Game Warden,
Phoenix, Arizona.

Dear Mr. Sawtelle:

We are in receipt of your request for an opinion with reference to House Bill 60 relating to taxidermy and providing for the licensing of taxidermists. This act amends Section 2500, Revised Code of 1928 so as to provide that it shall be unlawful for any person to engaged in the business of a taxidermist or to prepare or mount the skin, head or dead body of any animal of this state for profit without first obtaining a taxidermy license from the state game warden, which may be granted in the discretion of the warden. The Act then further provides that in case of a taxidermist who is a bona fide resident of this state, a yearly fee of $5.00 shall be charged for the license, but in case of a non-resident taxidermist, or a representative or solicitor of a non-resident taxidermist, whether or not the representative or solicitor is a resident, who solicits business of mounting the skin, head, or dead body of any animal of this state for profit, an annual fee of one hundred dollars for a taxidermy license shall be charged.

Since the legislature of a state, in the exercise of its police power, may secure the benefits of the game of the state to its own inhabitants, it may pass laws discriminating in favor of its own citizens as to the taking of game within its limits, by imposing greater restrictions and severer penalties upon non-residents than upon residents, and upon aliens, whether resident or non-resident, than upon citizens; and may even wholly forbid the taking of game by non-residents of the state. 27 C.J. 940. Also a state may make reasonable regulations as to transportation and shipment of game. 27 C.J. 952. However in the instant case, Section 2500 as amended by the proposed Act in our opinion does not fall in the classification of legislation for the protection of the fish and game resources of the state; instead it involves the imposition of fees with reference to such business and must therefore be tested by the same standards as a license law with reference to any other occupation or business.

There is no question but that the legislation constitutes a discrimination against non-residents as they are required to pay a fee of $100.00 whereas a resident is required to advance a fee of only $5.00. In the case of Gila Meat Company v. State, 276 Pac. 1 (Ariz.),

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at page 2 of the opinion our Supreme Court said:

> "One of the ways in which special privileges or immunities may be granted is by an unequal imposition of taxes. As the Supreme Court of the United States said in the case of McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579: 'The power to tax (is) the power to destroy.' The Legislature, therefore, may not impose an excise tax which is not uniform, unless the classification upon which the lack of uniformity is based is, as was said in State v. Wallace and Rockwell, supra, 'some principle which may reasonably promote the public health, safety or welfare.'"

In the instant case the proposed legislation so far as shown on its face has no purpose except to protect local residents engaged in the business of taxidermy from competition by non-residents. This constitutes no reasonable connection with the exercise of the valid police power of the state under the principle mentioned in the case just cited. In the case of Smith v. Mahoney, 107 Pac. 704 (Ariz) the Court considered an act of the legislature whereby non-residents grazing goats and sheep in the state should obtain a grazing license and pay the state a license fee of 25¢ per head the law was attacked because it was discriminatory as against non-residents. The Court sustained this contention and in disposing of the case said:

> "It shows upon its face that regulation is not its purpose, but that revenue or undue restriction in the interest of others not embraced in the class designated is the aim in view."

In our opinion the legislation in its present form by reason of its discrimination against non-residents is in violation of Article IV, Section 2 of the United States Constitution which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states" and of Section 1 of the Fourteenth Amendment to the United States Constitution providing that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." It is our further opinion that the proposed legislation is in violation of Section 13 of Article II of the Arizona Constitution which provides:

"No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."

The following authorities appear to strongly support our conclusions:

Chalker v. Birmingham and Northwestern Railway Co., 249 U. S. 522, 63 L. Ed. 748 (U. S. Supreme Court case).

Ex Parte Irish, 121 Kans. 72, 250 Pac. 1056, 61 A.L.R. 332.

See also Note, 61 A. L. R. 337.

Trusting this opinion may be of some assistance in the matter, I am

Very truly yours,

JOE CONWAY
Attorney General

LEN ORME, JR.,
Assistant Attorney General

EARL ANDERSON,
Special Assistant
Attorney General