

July 14, 1945

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ARIZONA ATTORNEY GENERAL

Mr. Fred Merkel  
Game and Fish Director  
Arizona Game and Fish Commission  
State Building  
Phoenix, Arizona

Dear Sir:

This will acknowledge receipt of your letter of June 28, 1945, in which you request our opinion on the following questions:

1. "Does the classification given buffalo as a 'neat' animal in the Code make the illegal killing of one a felony?"
2. "Does packing a hunter into a camp, packing his game, hiring him a horse, constitute guiding?"
3. "Also, does stationing of fishermen on Willow Beach and the activities of Cap Durham constitute guiding? (Explanation: the owner of Willow Beach, a resort on the Colorado River, takes fishermen out in a motor boat and stations them along the bank of the River for fishing. He returns to the resort at Willow Beach and performs his routine duties there and later returns and brings the fishermen back to the resort. Cap Durham at Big Lake rents boats and frequently goes out in a boat with a fisherman, instructs them in fishing such as casting, plugs, etc. and in all probability gives them the benefit of his experience as an old fisherman.
4. "Does the holding of deputy sheriffs' cards or other police powers jeopardize the Game Wangers' right to search? Does a Game Wanger have a right to search a car in a garage without a search warrant?"
5. "What determines a public highway?"
6. "How good is prima facie evidence, and I would like to have your legal opinion on the power of the Commission to--'deny any person the right to secure a license to hunt, fish or trap..' under Sec. 57-126 of the New Code."

Answering your first question, Chapter 52, Seventeenth Legislature of 1945 defines (bison) or buffalo as a game animal and in addition also classifies (bison) or buffalo as a "neat" animal.

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The general law of Section 43-302, 1939, Ariz. Code Annotated makes killing or stealing, etc., of "neat" animals a felony. Chapter 52, 1945, Session Laws, is a special statute passed for the protection of game and fish and under the general rule of law a special statute prevails over a general statute. Therefore, it is our opinion that the killing of (bison) or buffalo is not a felony under the Game and Fish Code.

Answering your second question, Chapter 52, 1945, of the Game and Fish Code the word "guide" is defined to mean any person who shall, for pay, aid or assist any person or persons in locating, pursuing, hunting or killing any of the big game animals or fish mentioned in this Act.

Therefore, it is our opinion that a person packing a hunter into a camp, packing his game and hiring a horse does not constitute guiding.

Answering your third question it is our opinion that any person hiring boats to carry people and stationing them on the banks of a river or a lake does not constitute guiding, however, as far as Cap Furham going out with fishermen, instructing and aiding them in any way to catch fish, in casting, plugs etc., he then becomes a guide and should be required to have a license as provided by Chapter 57-119 of the Game and Fish Code.

With reference to your fourth question, Article 2, Paragraph 3, Declaration of Rights of the Constitution of Arizona provides:

"Right of Privacy.--No person shall be disturbed or his private home invaded without authority of law."

While the holding of a deputy sheriff's card or other police powers would not jeopardize the Game Ranger's right to search, it is our opinion that a Game Ranger, or any other peace officer, has not the right to search a car in a garage without a search warrant.

Chapter 66-501, Arizona Code Annotated defines "Public Highway" to mean any public street, alley, road or thoroughfare of any kind used by the public or open to the use of the public as a matter of right for the purpose of vehicular travel.

Prima facie proof or evidence is that evidence which standing alone unexplained or uncontradicted is sufficient to maintain the proposition affirmed, and if not rebutted remains sufficient for that purpose, in other words, prima facie evidence or proof is good until it is contradicted and explained by better evidence.

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Any person convicted of violating any of the provisions enumerated in the Fish and Game Code may have his license revoked under Chapter 57-126, 1945, Session Laws, or the Commission may refuse to grant him another license to hunt, fish or trap anywhere in the State with or without a license for a period of from one to five years.

Trusting that the above information will answer your questions satisfactorily.

Yours very truly,

JOHN L. SULLIVAN  
Attorney General

MAURICE BARTH  
Assistant Attorney General

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