

*Yes  
4/7/52*

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ARIZONA ATTORNEY GENERAL**

April 4, 1952  
Opin. No. 52-94

Clifford Sorrells, Chief  
Division of Law Enforcement  
Arizona Game and Fish Commission  
Arizona State Building  
Phoenix, Arizona

Dear Mr. Sorrells:

We have your letter of March 29 requesting an opinion from this office construing Section 57-109 Arizona Code 1939 as amended, insofar as it relates to the tagging of big game animals. Your letter reads as follows:

"There are some points in regards to the tagging of big game animals which we would like to get your legal opinion. Under Section 57-109 of the Arizona Game Code, could a person in possession of a big game animal which does not have proper tag attached be charged with:

1. Unlawful possession.
2. Failure to tag such big game animal.
3. Could the person be charged with unlawful possession and failure to tag such big game animal?

In other words, what is the crime which has been committed?

Also under Section 57-109, is it possible for a person to have lawful possession of a big game animal if said animal does not have attached the tag furnished by the Arizona Game and Fish Commission?"

The pertinent part of Section 57-109 ACA 1939 as amended provides:

" \* \* \* \* it shall be unlawful for any person to have in his possession any big game unless said game is tagged with the form or tag provided by the commission."

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You will note that the above numbered section states that it shall be unlawful for any person to have in his possession any big game animal unless that game animal is properly tagged. It does not state that it shall be unlawful to fail to tag a big game animal in one's possession. In other words, the crime appears to us to be one of unlawful possession when a person fails to properly tag a big game animal. Specifically answering your questions:

1. A person could be properly charged with unlawful possession for failure to properly tag a big game animal as provided in Section 57-109 ACA 1939 as amended.

2. The above quoted section does not prescribe a specific and different crime of failure to tag. It merely provides that for failure to tag big game a person shall be guilty of unlawful possession of such game.

3. The answer to your third question is covered by our answer to number 2.

In answer to your last question, it might be possible for a person to have lawful possession of a big game animal even though the animal has not been properly tagged. When a hunter kills a big game animal he has a reasonable time within which to tag the animal. How long that reasonable time lasts would depend upon the circumstances in each case and during that reasonable time he might well be deemed to have lawful possession of the animal. However, after that time has expired, it is our opinion that he could not have lawful possession of such animal under the provisions of Section 57-109 inasmuch as that section specifically states that unless such game is tagged with a tag provided by the commission, it shall be unlawful to have such game in one's possession.

We trust the foregoing satisfactorily answers your questions.

Very truly yours,

FRED O. WILSON  
Attorney General

KENT A. BLAKE  
Assistant Attorney General

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