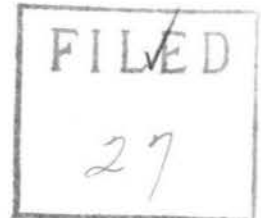


GAME & FISH; Pet deer required by Section 8247 R. S. Mo. 1929 to be licensed under Section 8299 R. S. Mo. 1929.

March 17th, 1933



Hon. Roth H. Faubion,  
Prosecuting Attorney of Barton County,  
Lamar, Missouri.

Dear Sir:-

I acknowledge receipt of your inquiry of February 23rd, 1933 requesting an opinion on certain facts, which request reads as follows:

" About the 15th of December, 1932 Mr. John Gray of this city bought a 7 months old buck deer from Dolan Park in Springfield, Missouri.

He bought said deer for a pet and for no other purpose. The deer seems to be very gentle and docile as a dog. It is not to be used for scientific or propagating purposes.

The Game and Fish Department has ordered the deputy game warden to either force the owner to buy a permit or for said game warden to confiscate the deer and to arrest the said owner, using sections 8298 and 8299 R. S. Mo. 1929.

Mr. Gray is a responsible man and wants to do the right thing in this matter. However he cannot find anything in the law that applies to his case. I am at a loss to know just how to act. The department wants me to act, but it seems to me that the action will not stand up.

Could your office please render me your opinion as to the status of said owner etc., and as to whether he is liable under said sections to buy a permit or not?"

The section having particular bearing on this situation is Section 8247, R. S. of Mo. 1929 and appropriate parts of which read as follows:

"SEC. 8247. POSSESSION OF GAME IN CLOSED SEASON--PENALTY.

Any person who shall have in his possession \* \* \* any \* \* \* game \* \* \* during the closed season prescribed by law therefor, \* \* \* except when such possession \* \* \* is permitted thereunder, shall be guilty of a misdemeanor and the game warden \* \* \* hereby \* \* \* authorized to \* \* \* confiscate any \* \* \* game \* \* \* from any person who may be holding the same, in violation of this article."

This act is a valid exercise of our police power of the State, as all game belongs to all the people in their collective sovereignty, and its possession and use is subject to the regulations of the State. The Supreme Court has stated this in the following language:

Haggerty v. Ice Mfg. & Storage Co., 143 Mo. 238.

"\* \* \*the common ownership of game, which otherwise would remain in the body of the people, is lodged in the State to be exercised like all other governmental powers in the State in its sovereign capacity, to be exercised in trust for the benefit of the people and subject, of course, to such regulations and restrictions as the sovereign power may see fit to impose. Such regulations appropriately fall within the domain of the police power of the State."

Greer v. Connecticut 161 U. S. 519, 1. c. 522.

"From the earliest traditions the right to reduce animals FERAE NATURAE to possession has been subject to the control of the law-giving power."

So far as the acts for the preservation of fish and game are concerned they operate on and affect all game, whether raised in captivity or not, and deer are included in the term "game".

State v. Weber, 205 Mo. 1. c. 44

"The term 'game animals' as used in the title of the act includes all kinds of deer within this State, whether wild or reduced to captivity.

No owner of deer raised in captivity has a better title thereto than has the hunter at common law to the deer captured or killed by him, \* \* \*"

Now, therefore, such possession of deer being unlawful under Section 8247 it would seem that the only manner in which Mr. Gray can continue in possession of this deer is to bring himself within the provisions of the article which will allow him to retain possession of the deer.

Sections 8298 and 8299 R. S. of Mo. 1929 require certain conditions be met before the restrictions of Section 8247 can be lifted. Section 8298 provides for permit or license for the transportation, taking, capturing, killing or importation of deer. Section 8299 provides for the permitting of raising and propagation of deer. Possession is permissible under the latter, but not under the former, except insofar as is permissible to accomplish the transportation, taking, capturing, killing or importing.

Hon. Roth H. Faubion,

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Section 8299 provides,

"The issuance of such licenses shall be discretionary  
with the state game and fish commission, \* \* \*".

If in his discretion, the commission will issue Mr. Gray a permit  
under Section 8299, Mr. Gray may lawfully and legally retain possession  
of his 7 months old buck. If not, Mr. Gray is subject to the penalties  
provided for in Section 8247.

Very truly yours,

HARRY G. WALTNER, Jr.,  
Assistant Attorney-General

HGW/mh

APPROVED:

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ROY McKITTRICK  
Attorney General