

GAME LAWS: Legal interpretation of still-hunting.

8236 laws 31

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November 23, 1933.

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Honorable Peter H. Huck
Prosecuting Attorney
Ste. Genevieve County
Ste. Genevieve, Missouri

Dear Sir:

Your request for an opinion dated November 4, was as follows:

"During our last open deer season, Octo. 26, 27, and 28, a controversy arose between our Game Warden and a number of deer hunters in our county, on which question we would be glad to have a legal opinion from your department.

The question arose over the interpretation of the phrase, 'or to take deer in any manner except through the method known as still hunting', as used in section 8236, R. S. of 1929.

I am informed the facts to be- That a group of deer hunters, stationed several of their number at supposed deer crossings and the other hunters started at a certain place in the woods to drive deer in the direction of the hunters stationed at said supposed crossings, making noise in brushes, shooting occasionally and mimicing the barking of dogs; our local game warden contends that the method of hunting as above set out is not still hunting the hunters claim that such is not unlawful.

Universal Dictionary defines 'still hunt' as noiseless hunting; stalking. I have not at hand definition of 'still hunt' by any of the Courts of our land. Kindly let me hear from you on the above at your convenience."

Section 8236 R. S. Mo., 1929, as amended by the laws of 1931, page 227, provides in part as follows:

"No person except landowners when hunting on their own premises shall hunt or kill deer in any manner except through the use of a gun propelling one all-lead or lead alloy or soft-nosed or expanding bullet or ball at a single discharge, or to take deer in any manner except through the method known as still hunting, but at no time shall it be lawful to shoot at, kill, wound, or capture or attempt to kill, wound, or capture, any deer while taking refuge in or swimming through the waters of any stream, pond, or lake, or between one-half hour after sunset and one-half hour before sunrise, nor shall it be lawful to make use of a dog in hunting, chasing, taking, or killing deer."

The courts in this country have never defined the word still-hunt, but Section 655. R. S. Mo., 1929 provides in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import:" * *

Funk and Wagnall's Dictionary defines still-hunt thus:

"Still-hunt - To approach or pursue noiselessly; stalk; as, to still hunt deer. To hunt game without noise or by stealth."

Webster's Dictionary defines still-hunt thus:

"Still-hunt - A hunting of game in a quiet manner, or under cover; stalking. The pursuit of any object quietly and calmly. To hunt or pursue noiselessly or stealthily; to stalk."

The sport of still-hunting deer is described to me by an old sportsman of the days before game laws, as the practice

of going quietly to a salt-lick before day break, knowing that deer were in the habit of visiting this location, the hunter conceals himself quietly, and without dogs or noise waits the approach of deer. The hunter cautiously selects his game, being sure to pick a buck deer of the proper age and being sure that his prey is no other object or animal than a select deer.

The hunting of deer in any other manner than by still-hunting is dangerous to the life of other hunters who are pursuing their chosen sport. It is also considered more sportsman like to pursue your game rather than entrap them. This legal method tends to protect our wild deer from extermination. These were the reasons for the passage of this law which is the subject of interpretation.

In considering another statutory prohibition the St. Louis Court of Appeals in *State v. Schwartzman* 40 S. W. (2d) 479 l. c. 48, the court said:

"The legislature act should be given such construction as to suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and for private gain, and to add force and life to the cure and remedy, for the public good. * * *. It is true that a criminal statute is construed liberally in favor of the defendant, and against the State, but this rule affords no warrant for a construction out of harmony with the manifest purpose and intent of the statute."

The hunters described in your letter do not practice still hunting, but rather practice the style of hunting known as the chase. It is the opinion of this office that the courts will follow the dictionary definition of still-hunt if called upon to interpret this law.

Respectfully submitted

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Assistant Attorney General.

APPROVED:

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