

FISH AND GAME: WILD GAME (BIRDS) CANNOT BE SOLD OR POSSESSED
UNDER A SPECIAL LICENSE FROM THE FISH AND GAME
DEPARTMENT.

5-21
May 15, 1934.

Honorable W. C. Buford
Commissioner, Game and Fish Dept.
State of Missouri
Jefferson City, Missouri.



Dear Wilbur:

Your request for an opinion dated April 16,
1934, reads as follows:

"Enclosed you will find letter from
Senator Edwin Nolte, which is self-
explanatory.

"Will you please let me hear from
you in this matter as soon as con-
venient?"

Your letter from Senator Nolte reads as fol-
lows:

"In accordance with our conversation
in Jefferson City a few days ago re-
garding a license to sell foreign
wild game in the State of Missouri
which have been shipped from the
European Countries to the United States
and on which the duty has been paid,
will you kindly take this up with the
Attorney General and let me know what
procedure we would have to go through
to get this license. This license is
wanted by Chester Franz & Company a
large wholesale poultry concern in the
City of St. Louis."

After reading your letter and also Senator Nolte's communication of April the 13th, and after talking with you on the 'phone, I take it that what you want to know is this: Can one, who is engaged in the poultry business legally receive and have in their possession, in Missouri, dressed game birds which were shipped from foreign countries to the United States and on which the federal duty tax has been paid? If one can legally receive and have in his possession such game birds, then what procedure must be followed in order to procure a state license to sell said birds in Missouri?

Section 8209, R. S. No., 1929, provides in part as follows:

"****Said game and fish commissioner shall at any and all times seize any and all birds, animals and fish which have been caught, taken or killed at a time, in a manner, or for a purpose, or had in possession, or which had been shipped, contrary to the laws of the state."

Section 8225, R. S. No. 1929, provides:

"No person shall, within the state of Missouri, kill or catch, or have in his possession, living or dead, any wild bird other than a game bird, or purchase, offer or expose for sale, transport or ship, within or without the state, any such wild bird after it has been killed or caught, except as permitted by this article. No part of the plumage, skin or body of any bird protected by this article shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state. For the purpose of this article the following only shall be considered game birds: The anatidae, commonly known as swans, geese, brant, and river and sea ducks; the rallidae, commonly known as rails, coots, mud hens and gallinules; the limicolae, commonly known as shore birds, plovers, surf-birds, snipe, woodcock, sandpipers, tattlers and

curlews; the galliene, commonly known as wild turkeys, grouse, prairie chickens, pheasants, partridges and quails; the columbae, commonly known as doves and pigeons; all other species of birds, either resident, migratory or imported, shall be considered nongame birds. Nothing in this article shall be construed to prevent the possession and sale of live canaries and parrots."

Section 8232, R. S. Mo. 1929, provides:

"No person shall take, capture or kill, by any means whatever, any game bird except the following named game birds between the following dates (both inclusive): Wild turkey, December 1st to December 31st of each year. Quail (bobwhite partridge) and woodcock, November the 10th to December 31st, each year. Ducks, geese, brant, snipe, black breasted and golden plover, greater and lesser yellow legs, rails, coots and gallinules - January 1st to April 30th, and September 5th to December 31st of each year. Doves -- September 1st to December 15th, but not more than ten doves can be killed by any one person in one day, or have in his possession more than 15 doves. Anyone who shall violate any of the provisions of this section shall be guilty of a misdemeanor."

Section 8247, R. S. Mo. 1929, provides:

"Any person who shall have in his possession or under his control any variety of fish, game or birds, during the closed season prescribed by law therefor, and any person who shall have in his possession, or under his control the carcass, pelt, or flesh of any animal, fish or game protected by this article, except when such possession or control is permitted thereunder, shall be guilty of a misdemeanor and the game warden and his deputies are hereby permitted and authorized to take and confiscate any fish, game, birds, or wild animals,

or the carcass, pelt or flesh thereof, from any person who may be holding the same, in violation of this article."

Section 8284, R. S. No. 1929, provides:

"Any persons, firm or corporation, to whom is consigned any birds, game or fish, the killing, sale or possession of which is at any time or at all times prohibited, shall, upon receipt of same, immediately notify the state game and fish commissioner, or any of his deputies, and safely keep such game, birds or fish in his possession or under control, subject to the order of said game commissioner. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor more than fifty dollars."

Section 8285, R. S. No. 1929, provides:

"Any person, firm, or corporation, who shall, at any time of the year, barter, sell or offer for sale, or who shall store or serve in any commission house, cold storage house or commercial establishment, in this state, either under the name used in this article, or under any other name, or guise whatever, any animal or birds protected in this article, whether taken within or without this state, or lawfully or unlawfully taken, shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), and an additional fine of five dollars (\$5.00) for every bird or animal or part of every bird or animal bartered, sold or offered for sale, stored or served: Provided, that nothing in this section shall be construed to apply to the pelts of fur-bearing animals lawfully taken, or as otherwise provided for taxidermists, or

scientific specimens in this article; Provided, nothing in this section shall be construed to prohibit the storing, and serving, in any eating establishment, of deer and elk raised in captivity, as provided for in section 8310."

Section 8286, R. S. No. 1929, provides:

"It shall be unlawful for any person, firm or corporation, to solicit by correspondence, printed cards, circulars, shipping tags, advertisement or otherwise, any illegal shipments, consignments or delivery of game and fish, contrary to the laws of this state, whether taken within or without this state, or in any other manner to aid or abet in a conspiracy to violate the game and fish laws of this state. Any violation of this section shall be a misdemeanor, and upon conviction of the offender, shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00)."

CONCLUSION.

Thus we see that it is the duty of the Fish and Game Commissioner to seize all foreign wild game held in possession of one contrary to the laws of this state. We see that under the provisions of Section 8225, supra, it is unlawful for one to have in his possession any game bird, alive or dead, except as permitted under the provisions of Section 8232, supra, which section provides for the open season, and then only with a bag limit for one who has in his possession wild birds, dead or alive. Where game birds are consigned to one, out of season - dead or alive, or where consigned, in open season but in excess of the bag limit, then the consignee must notify the Fish and Game Commissioner, whose duty it is to take possession or control over the consignment.

Under the provisions of Section 8285, supra, the Legislature makes it a crime for one to sell, barter for sale or store in any commercial establishment any game birds.

It is our opinion that Chester Franz and Company of St. Louis fall within the restraints of the law prohibiting commercial establishments from selling, bartering for sale or storage game birds. They also are restrained, as any other person, from having in their possession birds out of season or in excess of bag limit. The fact that the birds which they have in their possession are foreign and on which a duty has been paid does not alter their status. There is no provision in the law whereby they can be licensed, as per their desire.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS
Assistant Attorney-General.

ROY McKITTRICK
Attorney-General.

WOS/afj