

CRIMINAL LAW:
INFORMATION:
NUMBER OF COUNTS:

Where one offense is committed the state may file an information containing several counts where different sections of the statute are violated.

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Mr. Paul N. Chitwood
Prosecuting Attorney
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Centerville, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion on the question: May a person, who has possession of a fur-bearing animal out of season, be prosecuted under an information containing two counts, one for the possession of such animal, and the other for failing to procure a dealer and shipper's license?

The sections of the statute which have been violated to which you refer are Sections 8238, 8239 and 8261, R. S. Missouri, 1929. Section 8238, supra, makes it unlawful for any person to kill any fur-bearing wild animal, to take, have in his possession, offer for sale, etc., in certain periods of the year. Section 8239, supra, pertains to a dealer and shipper's license to purchase and sell, transport, possess and commercialize in pelts of fur-bearing animals.

It appears from the case which you have submitted that a party has been charged with possession of the pelt of a fur-bearing animal out of season contrary to the provisions of Section 8238, supra, and you are asking whether or not another count under Section 8239, supra, can be included in that information.

It will be noted that the punishment for the violation of the two foregoing sections is set out in Section 8261, supra, which makes it a misdemeanor to violate said sections.

In Kelley's Criminal Law and Practice, Third Edition, page 160, section 206, the rule as to the number of counts which may be included in an information charging misdemeanors is stated as follows:

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"An indictment may contain counts for several distinct offenses--misdemeanors only, provided the judgment and punishment for each be the same.
* * * * *

Section 3552, R. S. Missouri, 1929, provides as follows:

"When, by law, an offense comprises different degrees, an indictment may contain counts for the different degrees of the same offense, or for any of such degrees."

In State v. Davis, 29 Mo. 391, l.c. 397, the rule is stated as follows:

"The defendant had no right to compel the State to elect on which count in the indictment she would try him. As but one offence was committed, and the two counts related to the same transaction, it was entirely competent to the State to vary her charges by means of several counts, although under different sections of the statute, so as to meet the proof which might be produced."

So in the case which you have submitted, if the party, by his act, has violated Sections 8238 and 8239, then under the foregoing ruling it would not seem improper to charge him in two counts, however, the court might require you to elect at the close of the case on which count you would go to the jury.

CONCLUSION.

From the foregoing it is the opinion of this department that an information charging a person with misdemeanors may contain several counts where one offense has been committed and different sections of the statute have been violated.

Respectfully submitted

APPROVED:

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