

Game Laws—Maximum Number of Birds That May Be Killed in One Day By One Person.

Section 3701 of the Revised Codes of 1921 construed to limit the maximum number of birds of all kinds that can be killed by one person in any one day to five.

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State Game Warden,
Helena, Montana.

My dear Mr. Jakways:

I have a letter from the Game Warden of Kalispell, Montana, regarding the construction to be placed upon Section 3701 of the Revised Codes of 1921.

This section deals with the number of grouse, prairie chickens, sage hens, sage grouse, fool hens, pheasants or partridges that may be shot, killed or captured in one day. The section provides, in part, as follows:

"Any person who between the fifteenth day of October of any year and the first day of October of the following year, hunts, shoots, kills or captures, or causes to be shot, killed or captured, any grouse, prairie chicken, sage hen, sage grouse, fool hen, pheasant, partridge, or who, during the open season in any portion of the state of Montana, shoots, kills or captures, or causes to be shot, killed or captured, more than five grouse, or prairie chickens, sage hens, sage grouse, fool hens, or pheasants, or partridges, in any one day, or who shall have in their possession more than a total of five birds of any kind, at any one time, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly."

I am satisfied that it was the intention of this section to limit the number of birds that can be killed of all kinds in any one day by one person to five. In the Session Laws of 1921, in which it appears as Section 19 of Chapter 238, the words "any kinds" occur, but as published in the Revised Codes of 1921 the section contains the words "any kind." However, I am satisfied that this expression means "all kinds." This is further borne out by Chapter 173 of the Laws of 1917, Section 39 of which reads as follows:

"Any person who between the first day of October of any one year and the fifteenth day of September of the following year wilfully shoots or kills or causes to be shot or killed any grouse, prairie chicken, fool hen, sage hen, pheasant, or partridge, and who, during the open season in any portion of the State of Montana, shoots or kills or causes to be shot or killed more than five grouse or prairie chicken or fool hens, sage hens, pheasants or partridges in any one day *or who shall have in their possession more than a total of five birds at any one time*, shall be guilty of a misdemeanor and punished accordingly." (Italics ours.)

There is no question that this section limited the total number of birds that could be killed of all kinds in any one day to five, and I believe that is undoubtedly the intent under Section 3701, *supra*, which is the present statute.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.