No. 329

FISH AND GAME COMMISSION—EASEMENTS IN GROSS—PITTMAN-ROBERTSON ACT

Held: Easements in gross may be taken by the Fish and Game Commission, under the provisions of Chapter 157 of the Laws of 1941, but not under the provisions of Chapter 167, Laws of 1941.

Dr. J. S. McFarland
State Fish and Game Warden
Capitol Building
Helena, Montana
Attention: Mr. B. F. Vosburgh

December 31, 1941.

Dear Dr. McFarland:

You have submitted to this office a form of easement, a form of title status report to be annexed to the easement, and consent and waiver

forms, all of which have been heretofore approved by the Regional Director of the Fish and Wildlife Service of the Department of the Interior. You have asked that this office pass upon the above mentioned forms.

Under the provisions of Section 3, Chapter 167, Laws of 1941, the Fish and Game Commission may acquire lands connected with the Pittman-Robertson Act by purchase, lease, gift or devise. These are the methods by which acquisition may be had. Since Chapter 167 is a special statute, the Fish and Game Commission is confined to those particular methods of acquisition.

Under the provisions of Section 1, Chapter 157 of the Laws of 1941, known as general powers and duties of the Fish and Game Commission, the Commission has power to acquire by purchase, **condemnation**, lease, **agreement**, gift or devise, lands or waters suitable for game, bird, fish, or bur-bearing animal restoration, propagation or protection. However, it must be understood lands or waters acquired under the provisions of this act are separate and apart from those acquired under the provisions of Chapter 167, Laws of 1941.

Therefore, it is my opinion that, as to form, the instruments hereinabove referred to are satisfactory insofar as they pertain to Chapter 157 of the Laws of 1941. They meet the requirements of this chapter. However, they are not to be used in connection with land acquisitions under the provisions of Chapter 167 of the Laws of 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General