

**Game Law, License for Hunting Bear, Etc. Game Law,  
License Issued Head of Family.**

**License, for Hunting Bear, Etc. License to Head of Family,  
Who May Hunt Under.**

No license is required under the game law to hunt exclusively  
for bears, mountain lions and coyotes.

Where a non-resident has procured a hunting license, the female members of the family, and the male members under twenty-one years of age, need not procure a license.

Helena, Montana, August 25, 1908.

Hon. O. M. Harvey,  
County Attorney,

Dear Sir:—

Livingston, Montana.

Your letter of the 24th inst. received, in which you request an opinion upon the following questions:

1. Under the present game law, is a non-resident required to take out a license to hunt exclusively for bear, mountain lions and coyotes in this state?

2. Does a license for a non-resident, a head of a family, include his wife, or must the wife secure an additional license?

In answer to your first question, you are advised that, in our opinion, no license is required from a non-resident to hunt **exclusively** for bear, mountain lions and coyotes in this state. However, your attention is called to the last sentence of Section 3 of Chapter 57, Laws 1905, which reads as follows:

"The possession of a gun or rod in the fields, or in the forests, or on or about the waters of this state by any non-resident of this state without first securing the license required by this act, shall be prima facie evidence of the violation of its provisions, and any game warden or peace officer has the right to arrest any such party or parties without a warrant."

If this part of said Section 3 is still in force, it would be necessary for the non-resident, if arrested with a gun in his possession, to show that he was hunting only the animals mentioned above.

The code commissioner, in compiling the Revised Codes of 1907, omitted all of Section 3, apparently upon the theory that Section 6 of Chapter 142, Laws 1907 (Section 1976, Revised Codes), repeals said Section 3 by implication; but as there is nothing in said Section 1976 which conflicts with the latter part of said Section 3, we doubt the correctness of his construction.

As to your second question, we find the law to be in great confusion. The last proviso contained in Section 4 of said Chapter 57, Laws 1905, reads as follows:

"Provided further, that a license, under the provisions of this act, issued to the head of a family, shall include therein all female members of his family, as well as all male members thereof under twenty-one years of age."

Section 6 of the same act provides for non-resident licenses, and it would therefore seem that the proviso quoted above would apply with equal force to Section 6, inasmuch as it says that "a license under the provisions of this act."

However, the code commissioner omitted all of said Section 4 of

Chapter 57, Laws 1905, from the Revised Codes, presumably upon the theory that said Section 1976 of the Revised Codes, which was enacted in 1907, repealed it by implication. But an examination of said Section 1976 shows that it relates only to bona fide residents of the state, and while the provisions of said Section 1976 seem to indicate every bona fide resident of the state, regardless of age or sex, the question arises as to whether it applies to members of the families of non-residents, who are not required to take out a license under the provisions of the proviso in Section 4 of said Chapter 57, laws 1905.

In our opinion, the female members of a family, and the male members thereof under twenty-one years of age, were not required to take out a license under said Chapter 57, where the head of such family, who was a non-resident, had taken out one, and we do not believe that there is anything in Chapter 142, Laws 1907, which repeals the provision of said Section 4 of Chapter 57, so far as it relates to a family the head of which is a non-resident.

As to whether Section 6 of said Chapter 142, Laws 1907, (Section 1976, Revised Statutes), repeals, by implication, said provisions of said Section 4 of Chapter 57, Laws of 1905, wherein it authorizes female members and male members under twenty-one years of age of a family to hunt without a license, when the head of the family, who is a bona fide resident of this state, has a license, is not raised by your question, and we do not care to pass upon it at this time. Therefore, until such time as the construction of the law is settled by the courts, we would advise you to hold that, where a non-resident, who is the head of a family, has procured a license, the female members of the family and the male members under twenty-one years of age, may hunt without procuring a license.

Of course, as to the non-resident's fishing license, provided for in Section 2 of said Chapter 142, Laws 1907 (Section 1982, Revised Codes), there is no exemption for the female members or male minors of the family.

Yours very truly,

ALBERT J. GALEN,

Attorney General.