

Game Warden, Authority to Issue License. Game and Fish License, Who May Issue. License, Game and Fish, Who May Issue. License, Who May Collect for Issuing Game and Fish.

The game warden, or his regular deputies, or special deputies appointed for that purpose, or justices of the peace, may issue licenses to residents of this state to hunt and kill large game or game birds, or they may issue licenses to residents of this state, or non-residents, to catch fish in the state.

Only the game warden, his regular deputies, and deputies appointed for that purpose, are authorized to issue licenses to non-residents to hunt and kill large game or game birds.

The game warden and his regular deputies and clerks who draw a fixed salary are not authorized to collect the fee of ten per cent. as compensation for issuing licenses by them. Special deputies and justices of the peace who do not receive fixed salaries are authorized to retain ten cents upon each dollar of money collected from licenses issued by them.

Helena, Montana, March 15, 1910.

Hon. Edwin L. Norris,
Governor,
Helena, Montana.

I am in receipt of your communication of March 14, requesting an opinion upon the following questions:

"First: Who are entitled to issue fish and game licenses?

"Second: Who are entitled to collect compensation for issuing hunting and fishing licenses under the provisions of Section 1978?

"Third: Are salaried employes of the fish and game department entitled to collect the commission provided for in Section 1978?"

Section 4, of chapter 57, laws of 1909, (which section is not incorporated in the revised codes of 1907, as it should have been,) provides that any bona fide resident of the state who desires to hunt must first obtain a license from either the state game and fish warden, deputy game and fish warden, or a justice of the peace, while section 1972, revised codes, which is section 2 of chapter 142, laws of 1907, provides for a non-resident fishing license, and further provides that such license may be issued by the state game and fish warden, or a deputy game and fish warden, or a justice of the peace.

Therefore licenses issued to residents of this state, for hunting, or to residents or non-residents for fishing may be issued by the game warden, or his deputies, or a justice of the peace.

Upon the passage of these laws it was found that there was not a sufficient number of justices of the peace to make it convenient for many of the residents of the state desiring to fish and hunt to secure a license

without traveling a considerable distance in many instances, and the game and fish warden was advised by this office that it was within his power to appoint special deputy game wardens, without salary, with the power of issuing licenses only. Therefore, such special deputies must be added to the list of persons named in the statute as authorized to issue licenses.

On the other hand, under section 1977a, revised codes, it is provided that a person who is not a bona fide resident of the state must procure his license from the state game and fish warden, or a deputy game and fish warden, no mention being made of a justice of the peace.

It is also provided, in the amendment to section 1976, as amended by chapter 130, laws of 1909, that a person who is not a citizen of the United States, and who has not declared his intention to become such, must obtain a license from the game warden, or a deputy game warden.

From the above laws, it appears that the game warden, or his regular deputies, or special deputies, or justices of the peace, may issue licenses to residents of this state to hunt and kill large game, or feathered game, and that any such officer may issue licenses to residents of the state, or non-residents of the state who are citizens of the United States, to catch fish in this state.

On the other hand, the only persons who are authorized to issue licenses to non-residents to hunt and kill large game, or game birds, are the game warden and his regular and specially appointed deputies, as we find no statute authorizing a justice of the peace to issue such licenses to non-residents.

In answer to your second question, you are advised that the only persons who are entitled to collect the compensation of ten per cent, of the amount of their sales of licenses, as provided in section 1978, are justices of the peace, who are not salaried officers, and said special deputies, who draw no fixed salary.

As heretofore shown, section 4, of chapter 57, laws of 1905, authorize the game warden, or his deputies, or a justice of the peace, to issue licenses, and section 5, of the same act, expressly provides that when a justice of the peace issued such a license, that he may retain as his fee ten cents out of each dollar so collected, section 5 clearly showing that it was not the intention of the legislature that the game warden or his deputies, who receive a fixed salary, should be entitled to this extra compensation of ten cents.

In an opinion given by this office to the state treasurer, on July 11, 1905, (Opinions of Attorney General, 1905-06, p. 150), construing said section 5 of said chapter 57, it was held that a justice of the peace was entitled to his fee of ten cents, and also could deduct the necessary expense of transmitting money to the state treasurer and the duplicate license to the game warden.

As a result of this opinion section 1978 was enacted in 1907, for the purpose of making the law clear that the ten cents allowed to persons authorized to collect the same for issuing licenses was to include all costs of postage and other expenses attendant to the discharge of this duty.

But such act of 1907 was not intended to give the game warden or his regularly appointed deputies, receiving fixed salaries, the right to collect such extra compensation, although the language "all persons issuing hunting and fishing licenses," in itself, appears broad enough to permit them so to do.

It is not, however, the policy of the laws of this state to allow any person who receives a fixed salary to collect extra compensation in the way of fees or other emoluments for the performance of the duties for which he receives a fixed salary.

See: Sec. 4, Art. VII., State Const.; Secs. 168, 175 186 and 194, revised codes, as relating to state officers; also Secs. 3112 and 3113, as to the policy of the law in regard to county officers.

Your third question is practically answered in the answer to the second question, as it is apparent from the general review of the laws of this state, as cited above, that it was not the intention of the legislature to allow any officer or employe who receives a fixed salary for the performance of the services required of him to charge any fee or other compensation therefor. As was shown above, the provisions of section 1978 were not intended to authorize the game warden or his regular deputies, and do not authorize them, to collect the compensation of ten cents on the amount of sales of licenses issued by them, nor does it authorize any salaried clerk or employe of the game warden's department to collect such extra compensation.

Section 1966, revised codes, provides for the payment of a clerk in the office of the state game and fish warden, and fixes the compensation of such clerk at \$1,200.00 per annum.

It is clearly the intention of the law that this compensation was full pay for all services required by the law to be performed by such clerk. Furthermore, a clerk, under said section 1966, is not a deputy game warden, either regular or special, and, therefore, in my opinion, is not authorized under the law, to issue licenses at all.

Very truly yours,

ALBERT J. GALEN,

Attorney General.