

Game and Fish Law, Applicable to Buffalo. Buffalo, Protected by Game Law.

Animals wild by nature are subject to ownership only while subjected to possession or disabled and immediately pursued.

The killing of buffalo is prohibited by Section 8783 as amended by Chapter 81, Session Laws 1909; but this statute does not apply to the animals named therein when reduced to captivity and made the subject of private ownership and kept in control

and confinement by the owner, but when such animals roam at large and are not capable of being controlled they cease to be private property and are protected by the above statute.

Helena, Montana, October 27, 1910.

Mr. Henry Avare,
Game Warden,
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of October 27th wherein you state that information has come to your department that one Howard Douglas, commissioner, Domain Park, Canada, proposes a buffalo hunt on what was formerly the Flathead reservation for the purpose of killing renegade buffalo which were a part of what is known as the Pablo herd. You further state that these buffalo were in the possession of one Michel Pablo and were ranged and herded by him on the Flathead Indian reservation, he being a ward of the government, prior to the opening of the said reservation, but that also prior to the opening of the reservation, Pablo disposed of his herd to the Canadian government.

From your verbal statement accompanying your letter we also understand that a number of these buffalo have been shipped to Canada under this sale and that there are now remaining on the public range in what was the Flathead Indian reservation a number of wild and unruly buffalo, which it was impossible to capture and ship. Under this state of facts you are advised that in my opinion, notwithstanding the fact that the buffalo were subject to private ownership, when they were placed in captivity and under the control of Pablo, that those which on account of their wild state could not be sufficiently controlled to allow delivery to the purchaser and which cannot now be brought into and held within an enclosure, are under the laws of this state wild animals. Your statement of facts indicates that the purpose of the hunt is to kill these animals on account of the fact that they are wild and unruly and cannot be reduced to captivity. If such is their condition it discloses the very reason why they cannot be killed at all. Section 8783 as amended by Chapter 81, Sessions Laws of 1909, reads as follows:

“Any person who wilfully shoots, or kills, or causes to be shot or killed, any moose, bison, buffalo, caribou, antelope or beaver, shall be punished by imprisonment in the county jail for not less than six months nor more than two years, or shall be fined not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment.”

This statute, of course, does not apply to the animals named therein when they are reduced to captivity and made the subject of private ownership and kept in control and confinement by the owner. Section 4423 of the Revised Codes provides that:

“Animals wild by nature are the subjects of ownership while living only when on the land of the person claiming them or when tamed or taken or held in possession or

disabled and immediately pursued."

It is, however, clear that the property in these wild animals is qualified and depending upon their remaining in the possession of the owner and when these buffalo got out of the possession of the owner they remained private property only so long as it is shown that they had at all times had the intention of returning to the pasture or home in which the owner usually confined them.

In an opinion addressed to your predecessor, Mr. W. F. Scott, dated December 18th, 1906, and found in Opinions of Attorney General, 1906-08, page 8, the statutes and a number of authorities are cited up holding the views herein expressed. I respectfully call your attention to this opinion as an expression of my views with regard to the question now under consideration.

You are advised that, in my opinion, the slaughter of these wild animals, which cannot be captured or confined and which have not the "animus revertendi," are subject to the protection of the game laws of this state and that your department should take steps to prevent the killing of these animals, and the punishment of any person or persons guilty of violations of Section 8783 as amended above referred to.

Yours very truly,

ALBERT J. GALEN,
Attorney General.