

Fish and Game Fund. Game Warden, Expenses Of. Expenses, Game and Fish Warden. Appropriations. Claims Against State, Limitation Of. Limitation of Claims.

The provisions of the Revised Codes limiting the amount of expenses to be incurred by the state game and fish warden, or his deputies, is not an appropriation but is merely a limitation as to the amount that may be expended within any one year. The expenditures incurred by a deputy game warden at the direction of the state game warden outside of the district of

such deputy is limited only by the amount of the fish and game fund.

There is no limitation of law as to the time within which a claim against the state must be presented.

January 6, 1912.

State Board of Examiners,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 4th inst., with which you transmit claim of Henry Avare for expenses incurred by him as deputy game warden in the month of October, 1908, incident to the investigation of the murder of Chas. B. Payton, which services were performed by Mr. Avare at the request of the state game and fish warden and outside of his own district.

By the provisions of Sec. 1963, Revised Codes, there is created a fund known as the fish and game fund and said section provides that all fines and licenses and other moneys collected under any of the provisions of the game and fish laws should be placed to the credit of this fund.

Sec. 1967 provides for the compensation of the state game and fish warden and also provides for the payment of the actual and necessary expenses attached to his office but limits such expenses to \$2,000 in any one year. Sec. 1968 and 1969 provide for the salary of the deputies and for the payment of the expenses of said deputy game and fish wardens in their respective districts, which prior to the act of the Twelfth Legislative Assembly was limited to \$300 per annum in any one year.

Sec. 1958 provides for the division of the state into game districts, and further provides:

"The state game and fish warden may, however, when he deems it necessary for the better enforcement of the game and fish laws, send any of such deputies from the district so assigned to them to perform services in another part of the state and when such special deputy game and fish warden is so sent from his district to perform duties in any other part of the state, he shall receive pay for actual and necessary expenses incurred by him while traveling outside of his district."

It is my opinion that these expenses are not included within the \$300 per annum limitation provided by Sec. 1968, but that the expenses referred to in Sec. 1958 are limited only by the amount of the fish and game fund.

In an opinion given to the state game and fish warden on December 17, 1910, we held that the limitation of \$2,000 per annum as fixed by Sec. 1967, and of \$300 per annum as fixed by Sec. 1968 were not to be considered as appropriation bills, but merely as a limitation upon the amount of money to be expended in the office of the state game and fish warden and by his deputies for traveling expenses.

These expenditures then, having been incurred outside of the district of the particular deputy game and fish warden, are not to be

governed by the rule that the unused portion of an appropriation remaining at the end of the appropriation period reverts to the fund from whence it was appropriated. The amounts fixed by Sections 1967 and 1968 are not appropriation bills, but are merely limitations as to the amount that may be expended in any one year, and in view of the provisions of Sec. 1958 to the effect that the deputy game wardens in performing duties outside of their districts are entitled to receive pay for their actual and necessary expenses and that there is no limitation upon the amount of such expenses that may be incurred, there exists a fund out of which the bill in question might properly be paid, if a proper charge against the fish and game fund. It is true that more than three years have elapsed since the expenses itemized in the bill were incurred, but there seems to be no limitation of law as to the time within which a claim against the state must be presented.

There is a fund out of which the claim in question may be properly paid, the only question remaining whether the expenses were incurred in the performance of a service within the duties of the game and fish warden. Sec. 1951, Revised Codes provides that the duties of the state game and fish warden shall be to examine into and inquire about any violation of the game and fish laws of the state. Sec. 1957, Revised Codes, makes a similar provision with reference to the duties of the deputy game wardens. If the expenses embraced within the bill were incurred at the direction of the state game and fish warden and in the performance of a duty enumerated in Sec. 1951 or 1957, Revised Codes, then it is my opinion that the bill is a proper one and may be properly allowed. If, however, the services performed were outside of the province of the game warden, then necessarily the expenses incurred in such services are not necessary expenses incurred in the performance of a regular duty, and the bill is not a proper charge against the fish and game fund.

I return you herewith the claim and correspondence.

Yours very truly,

ALBERT J. GALEN,

Attorney General.