

**State Game and Fish Warden. Game and Fish Fund.**

Appropriation of moneys from the state game and fish fund cannot be used to pay expenses of the state game and fish warden's department over and above the appropriation made from such fund by law.

July 22, 1912.

State Board of Examiners,  
Helena, Montana.

Gentlemen:

I acknowledge receipt of your letter of the 15th inst., with which you transmit requisition made by the State Game and Fish Warden for vault fixtures as per drawing accompanying the requisition to the amount of \$408.00, with the request that the claim be allowed and paid out of the Game and Fish Fund and you ask my official opinion as to whether or not payment of this claim out of the Game and Fish Fund can legally be made.

Sec. 1963, Revised Codes, makes provision for the creation of a

fund known as the "Game and Fish Fund." Sec. 1964 provides that such moneys shall be kept by the State Treasurer,

"For the payment only of the salaries and other expenses incurred by the Game and Fish Warden's department."

Sec. 1965 provides that no warrant shall be issued against this fund except upon the presentation of a duly itemized account properly verified. By the provisions of Sec. 1964, this item could not be paid out of the Fish and Game Fund except as an item of expense incurred by the Game and Fish Warden's Department. If payment were made then it would necessarily be made out of the expense account of the Game and Fish Warden. However, Sec. 1967, Revised Codes, limits the amount of expenses of the State Game and Fish Warden to the amount of \$2,000 per annum. In your communication you state the expense account of the Game and Fish Warden is not sufficient from which to make payment of this amount.

Subdivision 17, Sec. 170, Revised Codes, prohibits the Auditor from drawing a warrant.

"Unless authorized by law and upon an unexhausted specific appropriation provided by law to meet the same."

Art. V, Sec. 34, of the Constitution provides that no money shall be paid out of the treasury except from appropriations made by law and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt. From the foregoing provisions of law, it is my opinion that this item cannot be paid out of the Game and Fish Fund for the reason that no appropriation therefor has been made by the Legislature and that the only fund it could be paid out of would be the expense account of the Game and Fish Warden, except, however, the item might be paid out of the "Capitol Furnishing Fund" should there be sufficient funds there to pay it; or, could properly be paid out of the "Contingent Fund" of the State Board of Examiners; or, a claim duly verified may be presented to the State Board of Examiners and if they approve it, in view of the fact that the appropriation for the expenses of the Game and Fish Warden has been exhausted, the claim may be transmitted to the legislative assembly in accordance with provisions of Sec. 235, Revised Codes.

I return you herewith requisition and accompanying drawing.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.