

Game Laws, Selling of Deer Hides. Deer Hides, Sale of.
Wild Animals, Ownership of.

Wild animals become the subject of private ownership only so far as the people may elect to make them so. The killing of game lawfully does not vest absolute title to it in the killer. The only property right which a person may have in game or fish is such only as is conferred by the legislative enactment; therefore, the sale of deer hides, either in or out of season, is unlawful, and selling of or trafficking in deer hides is unlawful.

June 18th, 1913.

Hon. J. L. De Hart,
State Game and Fish Warden,
Helena, Montana.

Dear Sir:

Recently you requested this office for an opinion as to whether or not the sale of deer hides is prohibited by law. I beg leave to advise that I have examined into the matter, and find that Sec. 8802 of the Revised Codes of Montana provides that:

"Every person who shall sell or offer for sale any of the birds or animals or any part thereof mentioned in Secs. 8782 to 8787 inclusive, is punishable," etc.

The animals which it is made unlawful to sell by the provisions of the section just quoted include deer. Under the provisions of Chap. 100 of the Session Laws of the Thirteenth Legislative Assembly, the sale of game and game birds is made lawful in certain instances, providing certain regulations are complied with, and Sec. 4 of the act provides that any person who shall have in his possession and offer for sale any game or game birds, without having complied with the provisions of the act, shall be deemed guilty of a felony. Sales under this act are lawful only when the game offered for sale has not been killed within the State of Montana. The same session of the legislature, under the provisions of Chap. 126 of the Session Laws took occasion to define the word "sale," as used in the statute of the State of Montana, and the word is there defined to mean:

"1. A contract by which for a pecuniary consideration called a price, one transfers an interest in either game or fish.

"2. A contract, by which for an article or thing of value one transfers, barter or exchanges an interest either in game or fish."

The rule of law respecting ownership in wild animals is thus stated in Cyc. at page 306 of the second volume:

"The ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor, but in its sovereign capacity, as the representative of, and for the benefit of, all its people in common. Such animals become the subject of private ownership only so far as the people may elect to make them so."

It has been held that the killing of game lawfully vests no absolute title to it in the killer, and prohibiting him to sell it, does not deprive him of his property without due process of law (*American Express Co. v. People of Ill.*, 9 L. R. A. 138), for the only property right which a man may have in game or fish is such, and such only, as is conferred by legislative enactment. (19 Cyc. 1011, and cases cited.) It will be observed that Sec. 8802, above, is general in scope and prohibits the sale of birds or animals or any part thereof, and it is my opinion that this section makes the sale of hides in or out of season unlawful, and whether or not the game was lawfully or unlawfully killed can make no difference.

You are advised, therefore, that the sale of or traffic in deer hides is prohibited.

Yours very truly,

D. M. KELLY,
Attorney General.