

**Fish and Game Laws—Elk, Shipment Of—By Residents
—By Non-Residents—Fish, Shipment Of.**

Laws relating to the open and closed seasons for the killing of elk construed.

Requirements for the shipping of game out of the state by residents prescribed, subject to regulations of Game Warden.

Requirements for shipment of game without state by non-residents.

No requirements for shipment of game to points within the state by residents or non-residents.

Requirements for the shipment of fish to points within and without the state by residents and non-residents.

July 22nd, 1919.

Mr. J. L. DeHart,
State Game Warden,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date inclosing letter from American Railway Express Company regarding open season for elk in this state, and also regulations governing the shipment of fish and game lawfully taken.

Sections 30 and 31 of Chapter 210, Session Laws 1919 (H. B. 89), amends Sections 30 and 31 of Chapter 173, Session Laws 1917, and fixes the open and closed seasons for elk in the different parts of the state. The first part of Section 30, as amended, fixes generally the closed season to apply throughout the entire state, except where different closed seasons are hereinafter specifically fixed for certain counties or parts of counties, while the remainder of Section 30 and all of Section 31 fixes certain closed seasons for certain counties or parts of counties therein specified, consequently any county or part of a county which is not specifically mentioned in the remaining part of Section 30 or in Section 31 takes the closed season fixed by the first part of Section 30. While this bill is very carelessly drawn I am of the opinion that the legislature intended that the open and closed seasons for elk should be as follows in the different counties:

Fergus, open season from Oct. 15th to Oct. 25th;
Mineral, open season from Oct. 15th to Oct. 25th;
Ravalli, open season from Oct. 15th to Oct. 25th;
Wheatland, open season from Oct. 15th to Oct. 25th;

Granite, open season from Oct. 15th to Oct. 25th; except that portion lying south and west of Nimrod station on the C., M. & St. P. Ry., being ten miles in width and fifteen miles in length, which has no open season;

Lewis and Clark, open season from Oct. 15th to Oct. 25th, for that portion lying north of North Fork of Dearborn river; remainder of county has no season;

Flathead, open season from Oct. 15th to Dec. 1st;
Glacier, open season from Oct. 15th to Dec. 1st;
Lincoln, open season from Oct. 15th to Dec. 1st;
Pondera, open season from Oct. 15th to Dec. 1st;
Teton, open season from Oct. 15th to Dec. 1st;
Beaverhead, open season from Oct. 15th to Dec. 1st for that part lying east of the O. S. L. Ry., and open season from Oct. 15th to Dec. 25th for that part lying west of the O. S. L. Ry.;

Gallatin, open season from Oct. 15th to Dec. 1st, for that part lying south of the 46th parallel, and open season from Oct. 15th to Dec. 25th for that part lying north of the 46th parallel;

Missoula, open season from Oct. 15th to Dec. 1st for that portion drained by waters of Big Fork of Flathead river; that portion lying east of Belmont creek from its source north of the Big Blackfoot river and east of the confluence of Belmont creek with the Big Blackfoot river at west end of Nine Mile Prairie, and that portion drained by waters flowing into Swan lake;

Powell, open season from Oct. 15th to Oct. 25th for that part lying south of the North Fork of the Big Blackfoot river, and open season from Oct. 15th to Dec. 1st for remainder of county;

Carbon, open season from Oct. 15th to Dec. 25th;
Madison, open season from Oct. 15th to Dec. 25th;
Park, open season from Oct. 15th to Dec. 25th;
Stillwater, open season from Oct. 15th to Dec. 25th;
Sweet Grass, open season from Oct. 15th to Dec. 25th.

There is no open season for elk in any of the following counties:

Sanders, Big Horn, Deer Lodge, Silver Bow, Jefferson, Toole, Hill, Chouteau, Cascade, Meagher, Blaine, Phillips, Valley, Sheridan, Richland, McCone, Wibaux, Dawson, Garfield, Yellowstone, Custer, Rosebud, Powder River, Treasure, Prairie, Fallon, Carter, Richland, Broadwater, Musselshell or Roosevelt.

With reference to the shipment of game and fish by residents and non-residents, the only provisions covering the same appear to be Sections 52, 53, 54 and 56 of Chapter 173, Session Laws 1917.

Section 52 is with reference to the shipment of game and birds out of the state by residents, and simply authorizes such shipments of game during the open season when lawfully killed, on presentation to the transportation company of a permit therefor procured from the State Game Warden.

Section 53 is with reference to the shipment of game out of the state by non-residents, and simply authorizes such shipments during the open season of game lawfully killed on presentation to the transportation company of the license of the person killing and shipping the same.

Section 54 requires that all packages containing game and fish must be labeled in plain letters on the address side of the package, so as to disclose its contents.

Section 56 authorizes the shipment of not to exceed 25 pounds of game fish upon showing a license to the agent of the carrying company.

No other provisions are found in the game and fish laws with reference to the shipment of game or fish by either residents or non-residents.

With reference to shipments of game out of the state by residents all that the law requires is that the game shall have been lawfully killed, that shipment is made in the open season, and that a permit to make the shipment has been procured from the State Game Warden and is presented with the shipment to the transportation company. No provision is made for any endorsement on the permit, or for attaching to the shipment of any tag of any kind, but unquestionably the State Game Warden may adopt such rules and regulations as he may deem necessary to prevent violations of the game and fish laws, and such rules and regulations may require such endorsement on the permit and also require a tag of some kind to be attached to the shipment, but this is a matter not covered by any provision of law, but wholly within the discretion of the State Game Warden.

With reference to shipments of game out of the state by non-residents all that the law requires is that the game shall have been lawfully killed, that shipment is made in the open season, and that the shipper's license shall be presented to the transportation company with the shipment. No provision is made for shipping coupons to be attached to the license which must be detached by the agent of the transportation company, but here also, unquestionably the State Game Warden may adopt such rules and regulations as he may deem necessary to prevent violations of the game and fish laws.

With reference to the shipment of game by either residents or non-residents from point to point within the state, no provisions covering the same is found in the fish and game laws, and not being prohibited it would appear that the same is not prohibited provided the game has been lawfully killed. But here also the State Game Warden may unquestionably adopt such rules and regulations with reference to such shipments as he may deem necessary and proper.

With reference to the shipment of game fish, Section 56 authorizes the shipment of not to exceed 25 pounds when the license on which the same were taken is shown to the agent of the carrying company. This provision does not mention either residents or non-residents, nor does it

specifically refer to shipments within or without the state, and it would, therefore, appear that under this section both residents and non-residents may ship game fish both out of the state and from point to point within the state by showing the license on which the same were taken to the agent of the carrying company.

In none of the provisions with reference to the shipments of game and fish is there any requirement that the owner must accompany the shipments, and it therefore seems clear that it was the intention of the legislature that such shipments might be made by the owner without his being compelled to accompany the shipment.

Respectfully,

S. C. FORD,

Attorney General.