

Deer—Statutes—Criminal Law.

Section 3698 R. C. M. 1921, prohibiting destruction of the evidence of sex of deer, is applicable to all counties in the state and prosecutions for violation of said section may be maintained in counties where the buck law is not in effect.

Robert H. Hill, Esq.,
State Game Warden,
Helena, Montana.

November 10, 1927.

My dear Mr. Hill:

You have requested my opinion whether a prosecution can be had

for violation of section 3698 R. C. M. 1921 prohibiting destruction of the evidences of sex of a deer where the evidence shows that the animal was killed in Flathead county, where the buck law is not applicable.

Section 3698 R. C. M. 1921 was originally enacted as section 16 A of chapter 238 of the laws of 1921, and read as follows:

“Destroying evidence of sex a misdemeanor. Any person killing deer permitted to be killed by the preceding sections who shall destroy evidence of the sex of the deer so killed, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.”

The words “preceding sections,” as used in said section, referred to the provisions of section 3697, originally enacted as section 16 A of chapter 238, session laws 1921. Said section provided a closed season in all counties for deer from December 1 to November 1, prohibiting the killing of deer in any county during the open season and enumerated some fifteen counties in which the killing of deer at any season of the year was prohibited.

Thus it will be seen that section 3698, as originally enacted, was limited in its scope to such deer as were “permitted to be killed” by the provisions of the section above referred to.

In 1925, by section 18 of chapter 192, session laws of that assembly, the legislature amended section 3698 so that it now reads as follows:

“Destroying Evidences of Sex, a Misdemeanor. Any person killing any deer within this State who shall destroy such evidence of the sex of the deer so killed as to make the determination of the sex thereof uncertain, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as in this Act hereinafter provided.”

It will be noted that the amendment broadens the language of the section so that it now reads “any person killing any deer within this state,” who shall destroy, etc.

It is my opinion that the above history of section 3698 shows a clear intent on the part of the legislature to make the law applicable to all counties within the state. Not only is this conclusion warranted by the history of the section, but it seems to me that there are other sufficient reasons for holding the section to be uniform in its application to all counties in the state. Obviously, the purpose of the section could be evaded by asserting that deer from which the evidence of sex had been removed were killed in a county where the law (section 3698) would not apply. If that plea could be interposed it would nullify, in large measure, the effectiveness of the section and would also violate the principle of uniformity which applies to all statutes unless a contrary intention is clearly expressed by the law-making bodies.

It is therefore my opinion that section 3698 applies equally to acts committed in Flathead county, or in any other county of the state.

Very truly yours,

L. A. FOOT,
Attorney General.