

**Fish and Game—Game Farm—Licenses—Wild Animals—
Capture.**

Grantee of permit to capture wild game birds and animals for the purpose of stocking a game farm need not do the

capturing himself in person but the capturing may be done through other persons acting for him.

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

May 14, 1931.

My dear Mr. Hill:

You request an opinion on the question of whether a person who has been granted a permit to capture wild game birds and game animals for the purpose of stocking a game farm must do the capturing himself, in person, or whether he may do it through an employee or agent.

Such permits are issued under authority of section 3777, R.C.M. 1921, and they may issue to any person, company, or association intending to engage in the business of propagating, owning or controlling wild game birds or game animals of the state of Montana upon premises owned, leased or controlled by such person, company or association. If the permit was granted to a company or association it is apparent that the capturing would have to be done by someone acting for the company or association as these are but legal entities and can do nothing whatever except through the agency of human beings. In such a case the permit would be granted to the company or association and yet the actual capturing would have to be done through persons acting for it. In my opinion, so long as these persons can show that they were acting for the permittee neither the permittee nor the person so acting would be violating the law.

In my opinion the same reasoning applies in the case where a permit is issued to an individual who intends to operate such a farm. He, himself, may not be qualified to do the actual capturing of the birds or animals, either through the lack of experience or physical deficiencies. If such a person had to do the actual capturing himself it is apparent that the effect of the law would be to permit only those who are capable of making the capture to engage in the business of propagating, owning or controlling wild game birds and game animals. Of course, no such intention was entertained by the legislature as there is no reasonable necessity for the person who intends to engage in such business being either an expert at capturing or being physically able to make the capture of the birds and animals in their wild state.

It is therefore my opinion that a permittee may do the actual capturing by and through some other person acting for him.

Very truly yours,

L. A. FOOT,
Attorney General.