

**Opinion No. 3****Fish and Game—Game Animals, Killing for Destruction of Private Property.**

HELD: The general language contained in Section 3653, R. C. M., 1921, as amended by Chapter 192, Laws of 1925, does not give power to the Commission to kill elk where trespassing on private land, and must be construed as applying merely to the performance of additional acts similar in character to those authorized.

January 5, 1933.

I have your letter requesting an opinion on the following question: "Has the Montana Fish and Game Commission the authority, under Section 3653 R. C. M., as amended by Chapter 192 session laws of 1925, to kill or cause to be killed game animals where it is shown they are destroying private property in certain localities and causing hardships to farmers and ranchers, to-wit: Destroying fences and hay stacks?" In explanation of your request, you have submitted with your request, a letter from Mr. C. C. Rowan, attorney at law of Red Lodge, detailing the facts upon which your request is made. From Mr. Rowan's letter, it appears that a band of elk released a few years ago by the Red Lodge Rod and Gun Club and the Fish and Game Commission in Carbon County, are doing the damage complained of by trespassing upon private ranch lands and destroying fences and eating and destroying stacks of hay.

Section 3653 as amended, after enumerating the powers and duties of the fish and game commission, ends with the following provision: "\* \* \* \* Said commission shall, in addition to the powers heretofore granted, have such other and further powers as may be necessary to fully carry out the purpose and intent of all the laws pertaining to fish, game, and fur-bearing animals, game and non-game bird propagation, protection, conservation and management of this act." It is suggested that this general provision gives the commissioners power to kill elk, if necessary, to stop the trespass.

The statutory rule of construction

where general words follow an enumeration of particular subjects, is that such words must be held to include only such objects or things as are of the same general character of those specifically enumerated. (Lewis' Sutherland on Statutory Construction, 2d ed., sec. 422). Page v. New York Realty Co., 59 Mont. 305; Section 10520, R. C. M., 1921.

The special powers and duties of the fish and game commission are contained in Section 3653, but nowhere is there any authority given in this section, to kill elk where they are committing a trespass. I do not find in the law relating to fish, game and fur-bearing animals any authority conferred upon the commission to kill or authorize the killing of animals protected by law that are doing damage to private property, except in the cases of muskrat and beaver. (See sections 3704-3722, R. C. M., 1921).

Under section 3697, it is unlawful to shoot, kill, take or cause to be shot, killed, taken or captured, or to attempt to shoot, kill, take or capture any elk or deer within the boundaries of any incorporated, or unincorporated city or town of the state. There are other specific provisions prohibiting the killing of elk, except in open season.

It is therefore my opinion that the general language contained in section 3653 does not give power to the commission to kill elk where trespassing on private land, and must be construed as applying merely to the performance of additional acts similar in character to those authorized.