

Opinion No. 25.**Fish and Game—Hunting, Hours of.**

HELD: Chapter 1, Laws of 1935, does not remove the restrictions on hours of hunting provided in Sec. 3696, R. C. M. 1921, as amended, nor does it repeal said Sec. 3696.

January 14, 1935.

Mr. J. W. Carney
State Game Warden
The Capitol

You have asked whether Chapter 1, Laws of 1935, repeals all of that part of Section 3696, Revised Codes 1921, as amended by Chapter 59, Laws of 1927, embraced in the last paragraph thereof.

Chapter 1, Laws of 1935, provides that the open season for elk in Park County shall begin October 15th and end March 1st, both dates inclusive, thus extending the open season as provided in Section 3696 as amended. This section provides: "And providing further, that it shall be unlawful and a misdemeanor, punishable as in this section provided, for any person to shoot or kill or attempt to shoot or kill any elk in Park County between the hours of 5 p. m. of any day and 8 a. m. of the following day, Mountain time." Chapter 1 is silent on this subject and the question is whether that part of this section has been repealed. Chapter 1, Section 4, provides that all acts and parts of acts in conflict herewith are hereby repealed. The general rules concerning implied repeal are stated in 59 C. J. 904, Section 508 et seq:

"An implied repeal is one which takes place when a new law contains provisions which are contrary to, but do not expressly repeal, those of a

former law * * * whether it has been so repealed is a question of legislative intent. While such a repeal is not favored, nevertheless it must be recognized and accorded effect where it is apparent that it was intended. Conversely, there is no room for repeal by implication where no legislative intent to repeal is indicated or expressed, or an intent not to repeal is apparent or manifest. * * * repugnancy may effect an implied repeal only pro tanto to the extent of the repugnancy." (Section 508.)

"The repeal of statutes by implication is not favored. The courts are slow to hold that one statute has repealed another by implication, and they will not make such an adjudication if they can avoid doing so consistently, or on any reasonable hypothesis, or if they can arrive at another result by any construction which is fair and reasonable. * * *" (Id. Section 510.)

"It will be presumed that the legislature, in enacting a statute, acted with full knowledge of existing statutes relating to the same subject; and where express terms of repeal are not used, the presumption is always against an intention to repeal an earlier statute, unless there is such inconsistency or repugnancy between the statutes as to preclude the presumption, or the later statute revises the whole subject matter of the former." (Id. Section 511.)

"Where there is sufficient repugnancy or inconsistency between two statutes, or parts of two statutes, to effect a repeal by implication, the earlier statute is impliedly repealed to, and only to, the extent of the conflict, repugnancy, inconsistency. * * *" (Id. Section 517.)

"One of two affirmative statutes on the same subject matter does not repeal the other if both can stand. The court will, if possible, give effect to all statutes covering, in whole or in part, the same subject matter, where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated." (Id. Section 519.)

It is my opinion that it was the intention of the legislature to merely extend the open season, that is the number of days, during which elk may

be killed in Park County, and that it was not the intention of the legislature to remove the restriction of Section 3696 as amended, above quoted. This is a very material part of that section, its main purpose, no doubt, being to protect the lives of hunters who might be mistaken for elk during the hours of twilight and darkness. If it had been the intention of the legislature to repeal such an important provision, protecting the lives of hunters, undoubtedly it would have said so. Since the change in the open season is not in conflict and is not inconsistent or repugnant to that part of section 3696 as amended, which restricts the hours of hunting each day, the latter, in my opinion, is not repealed by Chapter 1, Laws of 1935.