Opinion No. 266.

Fish and Game—Seasons, Changes of

HELD: 1. The State Fish and Game Commission may not increase the duration of hunting or fishing seasons.

2. The State Fish and Game Commission may fix an open hunting or fishing season of the same duration as is fixed by statute, but at an earlier or later period in the year, if such change is made to assure the maintenance of an adequate supply of fish or game.

April 14, 1936.

Mr. Kenneth F. MacDonald
State Fish and Game Warden
The Capitol

You ask:

"Would the Fish and Game Commission have authority to declare the season on elk and deer open earlier than provided in Section 3696 and Section 3697 of the statutes, in veiw of a bill passed at the last session of the legislature amending Section 3653 and giving to the Commission the following authority?

"Quote from Section 3653: 'It shall have authority to fix seasons and bag limits or shorten or close seasons on any species of game, bird, fish or furbearing animal in any specified locality or location or the entire state, when it shall find after said investigation that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or mod-

ified by rules and regulations promulgated by the commission'."

This amendment to the statute clearly authorizes the shortening of hunting and fishing seasons when necessary to assure the maintenance of an adequate supply of fish or game. Apparently this was the primary object of the statute. It is true the statute does authorize the commission to fix seasons. This should be construed with that portion of the same sentence which refers to its necessity in order to assure the maintenance of an adequate supply of fish or game. To extend the hunting or fishing season cannot be justified on the ground that same will thus assure such adequate supply. It is, therefore, held that the board may not increase the duration of hunting or fishing seasons by reason of this statute.

It may be that the above does not answer fully the question submitted, and that it is desired to know if, under the statute, the commission may fix an open season of the same duration, but at an earlier or later period in the year, in place of the time fixed by the prior statute. If such change is made to assure the maintenance of an adequate supply of fish or game, this statute is sufficiently broad in its language to warrant such change. However, the same could not be made for any other reason than that mentioned in the statute—to assure the maintenance of an adequate supply of fish or game.