

Opinion No. 269.**Fish and Game—Powers of the Commission—Rules and Regulations.**

HELD: The Fish and Game Commission has the power and authority, under the provision of Section 3653, R. C. M. 1935, to declare an open season on deer in Carbon County.

April 19, 1938.

Hon. J. A. Weaver
State Fish and Game Warden
The Capitol

Dear Mr. Weaver:

You have asked if the state fish and game commission has power to open certain areas of Carbon County for the hunting of deer.

Section 3697, R. C. M. 1935, declares:

“ * * * that it shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to shoot, hunt, kill, take or capture, or cause to be shot, killed, taken or captured, any deer, at any time within the counties of * * * Carbon * * *.”

The general powers of the fish and game commission are enumerated in Section 3653 and include the following:

“The commission hereby created shall have supervision over all the wild life, fish, game, and non-game birds, and waterfowl, and the game, and fur-bearing animals of the state, and shall possess all powers necessary to fulfill the duties prescribed by law with respect thereto, * * *. It shall have full power and authority to enforce all the laws of the State of Montana, respecting the protection, preservation and propagation of fish, game, and fur-bearing animals, * * *. It shall have authority to fix seasons and bag limits, or shorten or close seasons on any species of game bird, fish, or fur-bearing animal, in any specified locality or localities 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 modified by rules and regulations promulgated by the commission."

By the last section the legislature intended that the commission should have general administrative power over the supervision of wild life and game, and to fix seasons where none are set and to modify statutes when such action is necessary. Therefore, if the commission decides that the public welfare would be best served by declaring an open season on deer in Carbon County, Section 3697 could be modified to that extent. The objection to Section 3653 as an improper delegation of legislative power and in violation of Section 1 of Article IV of the Montana Constitution was discussed and refuted in Volume 17, Opinions of the Attorney General, No. 254.