

**Opinion No. 77.**

**Fish & Game Commission—Beaver  
Skins—When Contraband—Search and  
Seizure.**

HELD: Beaver skins taken without license or permit, and/or in violation of law are contraband.

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April 4, 1937.

Mr. J. A. Weaver  
State Fish and Game Warden  
State Capitol  
Helena, Montana

Dear Mr. Weaver:

You have requested our opinion upon the following questions:

“Would beaver skins taken on lands other than those specifically provided in the above quoted sections (Section 3722 and 3777, R. C. M., 1935) be contraband and subject to seizure and sale as provided in section 3722, R. C. M., 1935.”

The statutes pertaining to fish and game are:

“Measures to protect and preserve usable or valuable wild animals for the benefit of the public, are to be construed, as a whole in the light of

the obvious purpose intended to be accomplished, and so as to harmonize and give effect to all its parts if reasonably possible."

Waldo v. Gould (Minn.), 206 N. W. 46, 25 R. C. L. 1006, Section 247;

State v. Dist. Court, 34 Minn. 131, 158 N. W. 798.

In construing these statutes, we must bear in mind that they are not dealing in pre-existing property rights. The statutes provide that no property rights exist in wild animals in this state, except as permitted by the Act.

Section 6665, R. C. M., 1935, provides:

"Wild animals are subjects of ownership, while living, only when on the land of the person claiming them \* \* \*."

All property in all wild animals, generally speaking, is in the people of the state, in their collective sovereignty.

Ex parte Maier, 103 Calif. 487; 37 Pac. 402;

State v. Grier (Conn. 13 L. R. A. 804);

Grier v. Conn. 151 U. S. 519;

State v. Rodman (Minn. 59 N. W. 1098).

Legislatures have the right to limit and restrict the property right in wild animals in this state, and our legislature has so done by the passage of Section 3722 and 3777 R. C. M., 1935,

State v. Rodman, Supra;

State v. Shattuck (Minn.) 104 N. W. 719;

New York ex rel Silz v. Hesterberg, 211 U. S. 31.

Beaver comes within the definition of wild animals, and has so been construed by our courts.

Rosenfeld v. Jackways, et al 67 Mont. 558.

Being so construed, beaver comes under the state's control over game and is within the power of the state

legislature to enact such general or special laws as may be reasonable and necessary for the protection of the public's rights in such game, even to the extent of restricting the use or right of the property in the game after it is taken or killed.

77 C. J., Section 9, page 945.

Section 3722 gives full authority to the State Fish and Game Commission over the entire State of Montana, making provision for property rights in animals under certain conditions, but such condition are subject to proper licenses from the Fish and Game Commission, otherwise no individual has any right to beaver skins. So it is our opinion, that violation of any part of the said sections subjects beaver skins, taken on any land, as contraband, if the claimant of such skin has not complied with the provisions of the section and procured a license or permit.

Rosenfeld v. Jackways, Supra;

Cawsey v. Brickey (Wash., 144 Pac. 938).

As to the right of search and seizure, we refer you to Opinion No. 185 of Vol. 16, page 193 of Opinions of Attorney General.