

shall be their duty at all times to assist in the protection, conservation and propagation of fish, game, and fur-bearing animals, and game and non-game birds, * * *."

Opinion No. 244.

Fish and Game—Deputy Fish and Game Wardens—Powers—Duties—Posted Premises—Right of Patrol.

HELD: Private individuals cannot by posting their premises prevent deputy fish and game wardens from patrolling such premises in order to determine whether the law has been violated.

July 22, 1940.

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

Dear Mr. Weaver:

You have requested my opinion on the question whether deputy fish and game wardens in patrolling premises and examining fishermen have the right to go on posted property.

Section 3659, R. C. M., 1935, in defining the duties of deputy fish and game wardens, among other things, provides:

"* * * it shall be their duty to see that the laws of the State of Montana and the laws, orders, rules and regulations of the State Fish and Game Commission with reference to the protection, preservation and propagation of game and fur-bearing animals, fish and game birds are strictly enforced; it shall be their duty to see that all those who hunt, fish, or take game, or fur-bearing animals, game birds, or fish, have necessary licenses. * * * and to exercise such other powers of peace officers in the enforcement of the Fish and Game Laws of the State, and the orders, rules and regulations of the Commission, or of judgments obtained for the violation thereof, not herein specifically provided. It

While this section provides that in order to search without search warrant any tent not used as a residence, boat, car, automobile, or other vehicle, box, locker, basket creel, crate, game-bag, or other package and the contents thereof to ascertain whether any of the provisions of the laws of this State or the rules and regulations of the fish and game commission for the protection and conservation of fish, game birds or fur-bearing animals have been violated (see opinion of the Attorney General, Vol. 16, Opinions of the Attorney General, 193), no such restriction is placed upon deputy fish and game wardens in patrolling lands and premises not belonging to the state. In the absence of such restriction it is my opinion that no person can prevent deputy fish and game wardens, exercising the powers of peace officers, from discharging their statutory duties, by posting their property.

We are unable to find any statutory or other authority given to private individuals to interfere with the duties of deputy fish and game wardens and the enforcement of the law. If this could be done private individuals could post their property and enjoy absolute immunity from the officers of the law. Denying the privilege to others they could fish on their own premises without obeying the law themselves, for no one could determine whether they had violated the law. No such obnoxious favoritism is granted or guaranteed by the law.