

No. 16

FISH AND GAME—BAG LIMIT OF HOLDER OF IDAHO AND MONTANA LICENSE—EXTRA - TERRITORIAL EFFECT OF LATTER

Held: Even though a holder of an Idaho non-resident license permitting a bag limit of four pheasants of either sex with a right to ship and transport the same and also the holder of a Montana resident license permitting a bag limit of six male pheasants after the first day, nevertheless and notwithstanding the Idaho law, which has no extra-territorial effect, sportsman would be governed by the game laws of Montana and the regulations of the Fish and Game Commission thereunder.

February 6, 1941.

Hon. Walter T. Ballard
Member of the House of Representatives
State Capitol
Helena, Montana

Dear Mr. Ballard:

You have submitted the following question:

"I am the holder of a Montana residents' hunting license, and also the holder of an Idaho non-residents' license for small game. Under the Montana statutes, I am entitled to a legal bag limit during the open season of six male pheasants. As the holder of an Idaho license, I am entitled by the laws of that State to ship or transport personally any legal kill which I may make in that State. The legal bag limit and also possession limit is four birds which may be of either sex.

"Now then, am I, as the holder of these two licenses, entitled to a total bag limit in Montana, at any one time, of ten birds legally killed as above outlined? Your written opinion will be gladly appreciated?"

Section 3700, Revised Codes of Montana, 1935, reads as follows:

"PENALTY FOR VIOLATING CLOSED SEASON ON CERTAIN GAME BIRDS—POWER OF COMMISSION TO OPEN SEASON. Any person who, at any time within this state, hunts, shoots, kills, captures, or causes to be shot, killed, or captured, or attempts to shoot, kill, or capture any quail, Chinese or Mongolian pheasants, commonly called Ringneck pheasants, Hungarian partridge, ptarmigan or wild turkey, or has in his possession any of such birds or any part of any such birds, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less

than fifty dollars (\$50.00), nor more than two hundred fifty dollars (\$250.00), or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment, provided that the commission shall have the jurisdiction, power, and authority to open for limited periods of time, any county in the state or any portion thereof, to the hunting, shooting, killing, taking, or capturing of any of the birds herein mentioned, when in its opinion, conditions will justify the same, and to declare the number and sex of birds to be taken, killed, or possessed in any one day of said open season or for the entire open season so created by said commission."

Under the provisions of Section 3700, the section above-named, the commission's regulation for the year 1940, is as follows:

CHINESE PHEASANTS

"Nov. 10 - Dec. 1, 1940—(22 days) state wide, all day Sundays and Holidays, one-half days week days beginning at 12 o'clock noon. Bag limit three (3) cocks per day. Possession limit six (6) cocks after the first day."

Thus under the above section and regulation the bag limit would be three cocks per day; possession limit, six cocks after the first day.

While the law of Idaho allows the killing of four pheasants of either sex and the right to personally transport the same, nevertheless that law has no extra territorial effect; in fact "it is the general rule, that no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived. Unless the intention to have a statute operate beyond the limits of a state is clearly expressed or reasonably to be inferred from the language of the act, or from its purpose, subject matter, or history, the presumption is that the statute is intended to have no extra territorial effect, and it is to be so construed." (Vol. 25 R. C. L. 781 and also 11 Am. Jur. 296.)

"Statutes are intended to apply and be confined in their operation to persons, properties, and rights which are within the territorial jurisdiction of the law making power; and one who claims the benefits of such laws for either person or property beyond the territorial jurisdiction of the law making power must rest such claim upon a statute granting such extra territorial right.

"No presumption arises, from the failure of the state through its Legislative authority to speak on the subject, that the state intends to grant any right, privilege, or authority under its laws to be exercised beyond its jurisdiction."

Walbridge v. Robinson, 22 Idaho 236, 125 Pac. 812.

It is therefore my opinion that even though a holder of an Idaho non-resident license permitting a bag limit of four pheasants of any sex with the right to ship and transport the same, and also the holder of a Montana resident license permitting a bag limit of six male pheasants after the first day, nevertheless and notwithstanding the Idaho law, which has no extra-territorial effect, you would be governed by the game laws of Montana and the regulations of the fish and game commission thereunder which in the year 1940 entitled you to a bag limit of but six male pheasants after the first day.

Sincerely yours,

JOHN W. BONNER
Attorney General