

No. 204

**FISH AND GAME—ELK, when Commission has power to
destroy**

Held: The fish and game department has the authority to destroy elk
which are doing damage to special or private property.

August 9, 1941.

Dr. J. S. McFarland
State Fish and Game Warden
State Capitol Building
Helena, Montana

Dear Dr. McFarland:

You have submitted the following question:

If and when elk migrate onto private property and are causing damage to the land, may the Fish and Game Commission kill those elk that are doing actual damage, butcher them and sell them for public consumption?

The Fish and Game Commission is governed by the provisions of Section 3729.1 of the Revised Codes of Montana, 1935, which reads as follows:

“Section 3729.1. POWERS OF COMMISSION TO DISPOSE OF ELK INCREASED IN NUMBERS AND DAMAGING PROPERTY. That whenever elk, imported within the State of Montana, or any portion thereof, have increased in numbers to such an extent that in the judgment of the state fish and game commission their number should be reduced, and special or private property is being actually and materially damaged or destroyed by said elk, and a written complaint of such damage has been filed by the owners or lessees of said property with the state fish and game commission,

the said commission shall have the power and authority whenever, in its opinion, conditions warrant it, to take, kill, remove or dispose of such elk, or to permit the same to be taken, killed, removed, or disposed of under such rules, regulation and conditions as it may prescribe and promulgate."

Therefore it is my opinion that, if and when elk migrate onto private property and are causing damage thereto, the Fish and Game Commission, upon receipt of written complaint of such damage filed by the owners or lessees of said property, shall have power and authority—whenever in its opinion conditions warrant it—to kill those elk which are doing actual damage, butcher them and sell them for public consumption under such rules, regulations and conditions as it may prescribe and promulgate.

Sincerely yours,

JOHN W. BONNER
Attorney General