

## No. 330

**FISH AND GAME—PERMIT REQUIRED TO TRANSPORT, POSSESS OR DISPOSE OF ANIMALS OR PARTS OF ANIMALS—EXCEPTIONS—PENALTIES**

**Held:** Except as specifically permitted by the fish and game laws of the State of Montana it is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport within or out of the state any game, fish, wild birds, game or fur-bearing animals or parts thereof protected by the laws of this state, or coming from without the state, whether belonging to the same or different species from that native to the State of Montana.

December 31, 1941.

Mr. Walter T. Murphy  
County Attorney  
Mineral County  
Superior, Montana

Dear Mr. Murphy:

You have written this office as follows:

"Mineral County lies along the boundary of North Idaho, bounding on Shoshone County, Idaho, on the North, and Clearwater County, Idaho, on the South. This is all very rugged country, and numerous hunters residing in Wallace, Mullan and Kellogg, in Shoshone County, hunt upland birds and big game in Clearwater County, Idaho. To do this they must travel through Mineral County, Montana, and over one of several roads leading through the best hunting territory in Mineral County. One route used traverses the Little St. Joe Game Preserve, in Montana.

"There has been considerable poaching on the Montana game. The Idaho game season opens some time before the Montana season opens, and the Idaho hunters returning from Clearwater County with their game travel through Mineral County to return to their homes in Shoshone County.

"The Deputy Game Warden stationed here feels that the Idaho hunters transporting game through this country should have a permit to ship the same out of Idaho, and has arrested an Idaho hunter having in his possession certain game birds, admittedly killed legally in Idaho, charging him with unlawfully possessing game birds, because he did not have a permit for transportation of the same, nor a non-resident hunting license."

Section 3730, Revised Codes of Montana, 1935, provides:

"It is hereby declared to be unlawful and a misdemeanor, punishable as hereinafter provided, for any person or persons to ship or take out of the state any of the game or non-game birds, fish, game animals, fur-bearing animals, or the skins of fur-bearing animals, or any parts thereof, which are mentioned in this act whether taken within or coming from without the state, except the same be done in the manner provided for by sections 3730, 3731, and 3732."

Section 3731, Revised Codes of Montana, 1935, provides:

"Any resident of this state who desires to ship out of the state any game animals, game or non-game birds, fish, fur-bearing animals, or the skins of fur-bearing animals, or parts thereof, legally taken or killed in the state during the open season therefor, or coming from without the state, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and consignor, destination and number and kind of game or non-game birds, game animals, fish, fur-bearing animals, or the skins from fur-bearing or parts thereof, that is to be shipped, and said permit shall be presented to the transportation company with consignment."

Section 3732, Revised Codes of Montana, 1935, provides:

"Any non-resident of this state who has procured a proper license to hunt or fish within this state, and who desires to ship out of the state any of the game animals, game birds, fish, or any part thereof, taken or killed by him during the open season for killing the same, the same having been killed lawfully, shall present to the transportation company his license with the consignment of game or fish to be shipped, provided, that no person shall ship in one year more game or fish than it is lawful for one person to kill in a single open season. Provided that any non-resident who desires to ship or take out of the state, any fur-bearing animal, or the skins from fur-bearing animals, or parts thereof, legally acquired, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and the consignor, destination and number and kind of fur-bearing animals, or the skins from fur-bearing animals that are to be shipped and said permit shall be presented to the transportation company with the consignment."

Section 2 of Chapter 22, Laws of 1941, insofar as pertinent here provides:

"It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport within or out of the state any game fish, wild bird, game or fur-bearing animal or part thereof, protected by the laws of this State, or coming from without the State whether belonging to the same or different species from that native to the State of Montana, except as specifically permitted by this act. . . ."

Under the provisions of Section 3731, Revised Codes of Montana, 1935, a resident of the state may be permitted to ship fish and game legally taken or killed in Montana or from without the state, and the non-resident, if he has procured a proper license and permit from the state fish and game commission, may do likewise under the provisions of Section 3732, Revised Codes of Montana, 1935.

Therefore, it is my opinion that, except as specifically permitted by the fish and game laws of the State of Montana, it is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport within or out of the state any game, fish, wild birds, game or fur-bearing animals or parts thereof protected by the laws of this state, or coming from without the state, whether belonging to the same or different species from that native to the State of Montana.

Sincerely yours,

JOHN W. BONNER  
Attorney General