

killing of wild animals inimical to the stock industry or to game.

Section 3417.4, Revised Codes of Montana, 1935, provides in part as follows:

"There shall be paid from the bounty funds of the state for the killing of wild animals . . ."

Section 3417.5, Revised Codes of Montana, 1935, provides in part as follows:

"Any person killing any of the aforesaid animals . . . to obtain bounty thereon, shall . . . at the same time file with the bounty inspector, as hereinafter provided, an affidavit setting forth that he killed the animal or animals from which the skin or skins were taken . . ."

The above mentioned statutes use the words kill and killing. The last quoted portion of Section 3417.5 provides for an affidavit that the person killed the animal for which he claims a bounty. The popular conception of the word kill is to extinguish life, to extinguish the life of a living creature by the administration of some direct act upon the particular creature.

Your question is whether the unborn coyote pups in this instance were living creatures within the meaning and intent of the bounty laws, and the person claiming the bounty killed those pups within the meaning of the said bounty law.

It is true medical authorities contend that life begins with conception. Also it is claimed upon some examples that the foetus can live after the death of the mother for a period of some hours at least, and that living young, if well developed, may be delivered from a dead mother. See Medical Jurisprudence Forensic Medicine and Toxicology, by Williams and Becker, Volume II, Page 623. But no experiments of record show such young will be born alive naturally; all examples to be found in such medical authorities are based upon artificial deliveries. It is as yet to be presumed that the killing of the mother will in reality kill the young unless artificial action is taken immediately. Therefore, the killing of the wild animal would necessarily kill the unborn young under natural circumstances. Such killing of the mother might there-

Opinion No. 233.

Predatory Animals—Bounty—Unborn Predatory Animals—Claims For Bounty.

Held: Bounty under the laws of the state of Montana, is not payable on unborn young of predatory animals, found within the body of the female animal.

July 29, 1944.

Mr. Paul Raftery, Secretary
State Live Stock Commission
State Capitol
Helena, Montana

Dear Mr. Raftery:

You have requested an opinion of this office asking if bounty is to be paid for unborn predatory animals. The factual situation you present is a person killed a female coyote and in the skinning thereof removed unborn coyote pups and now presents his claim for bounty not only for the female coyote but also for the unborn pups.

Sections 2081 to 2087, 3414, and 3417.1 to 3417.14, Revised Codes of Montana, 1935, pertain to levy of taxes for, and payment of bounties for the

fore be an indirect killing of the unborn, but nature in reality would be the killer of the unborn.

The unborn were not in reality in existence at the time of the killing of the mother; they could not have been killed without physical force upon the mother. In reality they had no separate existence. The Supreme Court of the United States was confronted with a relatively similar question in the case of *United States v. 24 Live Silver Black Foxes*, and held in part as follows:

“For many purposes the law concedes to physiology the fact that life commences at conception, *en ventre sa mere* (1 Bla. 130), and is life for all beneficial purposes (1 P. Wms. 329), but to create a civil right status a child must be born. The circulating system must be changed and the child must have an independent circulation.”

The pups in question had no separate actual existence; they could not have been protected separately, nor could they have done damage separately from the mother. Therefore, it seems reasonable to hold that they were a part of the mother within the intent of the bounty law.

It is therefore my opinion that bounty is not payable to persons killing a female predatory animal, under the bounty laws of the state of Montana, for unborn young found within the female animal.

Sincerely yours,
R. V. BOTTOMLY
Attorney General