

Opinion No. 61

Fish and Game Department — Outfitters, Licensing of — Air
Transportation, Persons Providing Are Outfitters in Some
Designated Circumstances — Airplanes
Classed as Conveyances.

Held: 1. Individuals and or agents of companies who, as a part of
their commercial business, fly parties of hunters or fishermen
to and from hunting and fishing areas in the State of Montana,

must be licensed as outfitters by the State Fish and Game Commission if they deliver such hunting and fishing parties in close proximity to hunting and fishing areas and the responsibility for such parties is not thereafter assumed by a guide or outfitter licensed by the State of Montana. If such parties are delivered into the hands of a guide or outfitter licensed by the State of Montana, the purpose of the act requiring such licenses is subserved and the persons providing the air transportation need not be licensed.

September 28, 1949.

Mr. A. A. O'Claire,
State Fish and Game Warden,
Helena, Montana

Dear Mr. O'Claire:

You have presented the following matter for my consideration:

"An air transport company, located in Kalispell, is licensed to carry passengers under a C. A. A. license. This company has been taking fishermen on non-scheduled flights and landing on non-commercial air fields on National Forest land located in the primitive areas of the South Fork and Middle Fork of the Flathead Drainages. The pilot of such air craft may take fishermen in to one of these fields and either wait on the air strip for the fishermen to return and take such fishermen back to Kalispell, or the pilot may pick up such fishermen at certain designated times for the return trip. A certain charge is made per passenger for the flights."

You request an opinion as to whether or not the individuals and/or agents of companies carrying on such activities should be licensed outfitters under the laws of the State of Montana.

Section 3745 through 3750, Revised Codes of Montana, 1935, as amended provide for the licensing of guides and outfitters. Section 3748, as amended by Section 4 of Chapter 173, Laws of 1949, defines outfitters as follows:

"For the purpose of this act, the word 'outfitter' shall mean any person or persons who shall engage in the business of outfitting for hunting or fishing parties, as the term is commonly understood, or any person, persons, or agent of a domestic corporation who is operating in this State from a temporary or permanent camp, private or public lodge, private or incorporated home, who shall for pay provide any saddle or pack animal or animals, vehicles, boats, or other conveyance for any person or persons to hunt, trap, capture, take or kill any of the game animals or to catch any of the game fish of the State of Montana. This act shall not apply to a person or to persons not engaged in the business of an outfitter who renders to another an occasional accomodative service in the furnishing of saddle or pack animals, boats or other conveyance to a hunter or a fisherman."

In determining whether individuals and/or agents of companies who transport hunting and fishing parties to hunting and fishing areas by airplane shall be classified as outfitters and therefore required to be licensed by the State Fish and Game Commission, the rules of statutory construction as set forth in the Montana Codes and as interpreted by the Supreme Court of Montana must be considered and applied.

Section 10520, Revised Codes of Montana, 1935, is as follows in part:

"In the construction of a statute the intention of the legislature, . . . is to be pursued if possible: . . ."

Section 4, Revised Codes of Montana, 1935, is as follows in part:

". . . The codes establish the law of this State respecting the subjects to which they relate and their provisions and all proceedings under them are to be liberally constructed with a view to effect their objects and to promote justice."

Section 10520, *supra*, was applied in the case of *State ex rel. Boone v. Tullock*, 72 Mont, 482, 234 Pac. 277, wherein the court used the following language on Page 487:

"However in the construction of a statute, the intention of the legislature is to be pursued if possible. . . . And we must look not only to the words employed, but also to the evil to be remedied. . . . Of two admissible constructions of a statute, the courts are never justified in adopting the one which defeats the manifest object of the law."

What is the "evil to be remedied" or "the manifest object" of Sections 3745 through 3750, *supra*? Section 3745, as amended, provides that guides and outfitters must be licensed. Section 3746, as amended, provides the penalty for non-compliance with the act. Section 3747, as amended, defines guides and Section 3748, as amended, defines outfitters, Section 3749, as amended, provides for statements to Game Wardens by guides and outfitters and is perhaps the most revealing Section insofar as the purpose of the legislation is concerned.

Section 3749, as amended by Section 5 of Chapter 173, Laws of 1949, is as follows:

"Whenever an outfitter or guide is employed by any person or party, such outfitter or guide shall keep a record showing the name, address, license number, dates employed by each person, and the number of each kind of game killed or amount of fish taken. Such information contained in the record shall be made available at any time upon request of the State Fish and Game Warden or his Deputies, and annually on January 15, each outfitter or guide shall submit a report to the State Fish and Game Warden giving the total number of persons employing him as a guide, the number and species of game killed, and the amount of fish which were

taken; providing that a licensed guide shall not be required to submit a report for the time that he has been employed by an outfitter. Failure on the part of any guide or outfitter to comply with the provisions of this act shall be sufficient cause for revocation of a guide's license or outfitter's license by the commission."

From the above quoted Section it is clear that the prime purpose of the act providing for the licensing of guides and outfitters was to enable the State Fish and Game Department to measure the quantities of fish and game available in designated areas, the amount of game killed and fish taken, and the number of persons actually hunting and fishing in such areas. Such information is of great value to the Department in its efforts to serve the best interests of the people of Montana by promoting the conservation of wildlife.

With reference to the question involved in this opinion, it is apparent that if the "manifest object" of the legislation is to be carried out, the records of the Department with respect to expeditions taken into remote areas should be as complete as possible. If large numbers of persons are taking advantage of commercial air transportation service to hunt and fish, the prime purpose of the act will best be subserved if the number of such persons and also the amount of fish and game taken by them is recorded. I believe Section 3748, *supra*, as amended, should be interpreted as liberally as possible so as to include within the definition of "outfitters," individuals and/or agents of companies who transport hunters and fishermen by air.

Section 3748 designates outfitters as parties who shall for pay provide saddle or pack animals, vehicles, boats or other conveyance. Webster's New International Dictionary, 2nd Edition, defines conveyance as follows:

"The means of carrying or transporting anything, now especially persons as passengers."

Certainly an airplane fits into the above definition of a conveyance and also it takes no great liberality of interpretation to hold that an airport is a "permanent camp" as set forth in Section 3748.

I do not believe a ruling that individuals and/or agents of companies engaged in transporting hunters and fishermen by air must in every case be licensed outfitters would be justified and I do not so hold. In a situation where a party of hunters or fishermen is flown to a base camp and then met by a guide or outfitter who takes over the party and continues the trip by other means, the purpose of the act would be subserved if the person or persons who meet the party at the base camp were licensed by the Fish and Game Commission. Nor can the legislation be strained to include intermediate flights whereby persons whose ultimate destinations are hunting or fishing grounds are transported for a portion of such distance by airplane and then resume the journey by other means of transportation. However, where the air transportation deposits the party at or near the location where the hunt-

ing and fishing is to be accomplished and the party is not there met by a licensed guide or outfitter, the individuals and/or agents of the companies providing the air transportation must be licensed outfitters. One of the prime factors to be considered is the extent of the responsibility assumed by the carrier transporting the passengers to their ultimate destination and return. If such responsibility can be shifted as in the first case outlined in this paragraph, then the persons supplying the air transportation need not be licensed outfitters, but if they remain responsible as in the last example, they must be licensed as provided by law.

Therefore, it is my opinion that individuals or agents of companies who, as a part of their commercial business, fly parties of hunters or fishermen to and from hunting and fishing areas in the State of Montana, must be licensed as outfitters by the State Fish and Game Commission if they deliver such hunting and fishing parties in close proximity to hunting and fishing areas and the responsibility for such parties is not thereafter assumed by a guide or outfitter licensed by the State of Montana. If such parties are delivered into the hands of a guide or outfitter licensed by the State of Montana, the purpose of the act requiring such licenses is subserved and the persons providing the air transportation need not be licensed.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.