

The duties of Deputy Game Wardens are prescribed by Section 26-110, Revised Codes of Montana, 1947. In general, the duties enumerated in that section are limited to the protection, preservation and propagation of game, furbearing animals, fish, game and non-game birds. Section 26-110, par. (2) says:

"It shall be their duty to see that the laws of the state of Montana and the laws, orders, rules and regulations of the state fish and game commission with reference to the protection, preservation and propagation of game and furbearing animals, fish and gamebirds are strictly enforced." (emphasis mine)

Section 26-110, par. (4) prescribing the powers, duties and qualifications of Deputy Game Wardens provides that they have the authority:

". . . to arrest without warrants any persons committing in their presence any offense against the fish and game laws of the state of Montana . . . and to arrest without warrant any person who they have reasonable and probable cause to believe has committed any such offense . . . and to exercise such other powers of peace officers in the enforcement of the fish and game laws of the state and the orders, rules and regulations of the commission, or of judgments obtained for the violation thereof, not herein specifically provided." (emphasis mine)

This section contemplates that Deputy Game Wardens will exercise the powers of peace officers only in the enforcement of the fish and game laws. The Deputy Game Warden is not a peace officer in the general meaning of the term. That term is defined by Section 94-4906 as follows:

"A peace officer is a sheriff of a county, or his deputy, or a constable, marshal or policeman of a township, city or town."

Hunting upon posted land is made a misdemeanor by Section 94-3309 which is contained in the chapter on Malicious Mischief. This is a chapter

Opinion No. 112

Fish and Game—Deputy Game Wardens, Duties of—Trespass—Trespassers, Prosecution of—Peace Officers—Arrest—Assault.

Held: 1. A deputy game warden may not, acting in that capacity, arrest a trespasser on privately owned and posted land.
2. A deputy game warden is not a peace officer within the meaning of Section 94-4906, Revised Codes of Montana, 1947.
3. The duties of deputy game wardens are to uphold the fish and game laws of the State of Montana, and the rules and regulations of the State Fish and Game Department.

August 18th, 1952.

Mr. R. H. Lambeth
State Fish and Game Warden
Fish and Game Department
Helena, Montana

Dear Mr. Lambeth:

You have requested my opinion as to whether a Deputy Game Warden has the authority to arrest and prosecute for simple or malicious trespass, if a land owner's property is posted against said trespass.

devoted to criminal offenses generally, and is not a fish and game section.

The general power to arrest for public offenses is vested in peace officers. Section 94-6003, Revised Codes of Montana, 1947, provides:

“A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person—

1. For a public offense committed or attempted in his presence . . .”
It is therefore my opinion that:

1. A Deputy Game Warden may not, by virtue of and acting in that capacity, arrest a trespasser on privately owned and posted land.

2. A peace officer as defined by Section 94-4906 is vested with the power to arrest such a trespasser.

3. The duties of a Deputy Game Warden are to uphold the state fish and game laws, and to exercise such powers as are specifically granted to him by those laws.

Very truly yours,
ARNOLD H. OLSEN
Attorney General