

MINUTES OF THE MEETING OF THE FISH AND GAME COMMITTEE
January 10, 1981

The meeting was called to order at 12:35 p.m. Roll call was taken. All committee members were present except Representative Burnett and Representative Manuel who were excused.

The hearing was opened on HJR 2. Representative Nilson carried the resolution for Sponsor Representative O'Connell.

Representative Nilson gave a brief history of the resolution. Dick Bradshaw, from Great Falls, had contacted Ron Marlene concerning a citation he had received from a Fish and Game Warden for not taking all edible parts from birds they had shot. Congressman Marlene referred Mr. Bradshaw to Representative O'Connell who in turn had HJR 2 drafted. Mr. Bradshaw's concern is what parts are considered edible and when to know if you are in violation of the law.

Jim Flynn, Director of the Department of Fish, Wildlife and Parks, gave copies of a statement from his Department concerning HJR 2 (see Exhibit 1).

Jack LaValley, Warden for the Department of Fish, Wildlife and Parks, Great Falls, told the committee he feels rulings should be up to the discretion of the warden. The Department should set some policies but each case in the field is different and the wardens should be able to decide whether or not a citation should be issued.

Erwin J. Kent, from the Department of Fish, Wildlife and Parks, agreed with Mr. LaValley. He said the Department could set some guidelines and this could be done within the Department.

Robert VanDerVere, a citizens lobbyist, told the committee it is time to determine what is edible and what is not. He asked the committee to refer to Section 87-3-506, MCA. He said this section contained ambiguous language. The committee should look at this and include fur-bearing animals in the resolution.

Representative Nilson told the committee there is a definite problem. Had Mr. Bradshaw been in a different county, the result may have been different. Representative Nilson told the committee that if he was ten miles into the backcountry and he killed something, he wouldn't know, according to the statutes, what part of the animal he would have to bring out.

Representative Jacobsen asked Mr. Flynn if it is his intention to try to present some terminology to the committee to get

this action taken and still have time to send over to the Senate if it passes the House.

Mr. Flynn told the committee the people from the Department would begin Monday to develop guidelines that would spell out what is edible and not edible and present those guidelines to this committee by the 40th legislative day.

Representative Daily asked Representative Nilson what he thought of the suggestion made by the Department. Representative Nilson said he was not opposed to what Mr. Flynn said.

Representative Phillips asked if the rules proposed by the Department would have the force of law under the statutes. Woody Wright, Legal Counsel for the Department of Fish, Wildlife and Parks, told the committee if the rules were properly adopted under the statutes, properly published and adopted by the Rules Committee then yes, they would be enforceable.

Representative Feda asked if it wasn't correct that a hunter has to maintain identification of a bird. Mr. Kent told him there are regulations that require certain portions of a bird to be kept to aid in identification of the species.

Representative Daily asked if the Department would get input from other people before the regulations are written. Mr. Flynn assured him they would.

A motion was made to go into Executive Session.

Representative Feda moved the committee let Director Flynn "work on the administrative code on this and meet with the interested parties."

Representative Nilson asked the Department to contact sportsmen's groups for input.

Representative Feda said he will add that to the motion.

Representative McLane seconded the motion.

The motion was passed with all members voting in favor of the motion.

Representative Mueller moved the committee adjourn. The motion was seconded by Representative Daily.

The meeting adjourned at 1:30 p.m.


ORVAL ELLISON, Chairman

BEFORE THE HOUSE FISH & GAME COMMITTEE, 47TH LEGISLATURE
OF THE STATE OF MONTANA

STATEMENT OF DEPARTMENT OF FISH, WILDLIFE, & PARKS

January 10, 1981

HJR 2

Good morning, Mr. Chairman and members of the committee. My name is Jim Flynn, Director, Montana Department of Fish, Wildlife, & Parks. I appear here today on behalf of the department to address HJR 2. This resolution is designed to provide an administrative determination of the definition or meaning of the words "suitable for food" in Section 87-3-102, MCA. The department recognizes that a problem arises from time to time with the interpretation of this particular phrase. To date, the department has considered the matter on a case-by-case basis depending upon the facts and condition of the game bird, animal, or fish in any given situation. This is the first time that this matter has been raised to the level of legislative concern.

Should you act favorably upon this resolution, the department is concerned with the process and cost of establishing an administrative rule. Considering the number of people and the amount of time involved, we anticipate it would take up to \$2,000 to carry out the notice, hearing, and final action. This estimate includes report writing, taking of testimony, and other activities needed to make this rule under the Montana Administrative Procedure Act. Further, the department is concerned that a rule such as this limits flexibility of the law enforcement personnel to consider what is "suitable for food" in a given fact situation. Currently, the enforcement person may view the carcass of the animal, bird, or fish and determine whether or not there is bloodshot meat, cysts, rot, spoilage, or some other

factor which renders the meat obviously not suitable for food. It is the administrative practice of the department to not consider the viscera, heart, lungs, stomach, intestines, kidneys, etc. as food of a game animal. While some individuals do consider those parts or some of those parts edible, it has been a long administrative practice of the department not to issue a citation to anyone who leaves the viscera on the ground.

In order to address this problem, the department suggests an alternative proposal - that of administrative guidelines established by myself, as director. The department would provide, to all personnel, guidelines of an intra-departmental nature for issuing citations (Notices to Appear) for individuals considered in violation of the waste statute (87-3-102). These guidelines would be presented to you before the 40th legislative day for your consideration and if the committee felt they were sufficient, they would be placed in effect for the 1981-82 hunting season. If the committee felt they were not sufficient then it would still have time to act on the proposal and transmit it to the Senate.

Thank you for this opportunity to appear. I am available for any questions.

HGR 2

COMMITTEE

Date January 10, 1981

SPONSOR

William Flynn	1401 Riverfront Helena, Mt	Dept F.W.P.	X
Jack Beardslow	P.O. Box 100 Great Falls, 59403	SELF	X
Jack R. Valley	Great Falls, Mt	Dept F.W.P.	X
Edwin J. Kent	Helena, MONT	Dept F.W.P.	X
Robert L. Sweeney	Glendora, Mt	Self	X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

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MR.

We, your committee on FISH AND GAME

having had under consideration HJR
- Bill No. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA DIRECTING THE FISH AND GAME COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ESTABLISH AND
PROMULGATE A NEW RULE CLEARLY DEFINING THE PORTIONS OF THE CARCASSES
OF GAME ANIMALS, BIRDS, AND FISH THAT MUST BE RETAINED AS EDIBLE
PORTIONS.

Respectfully report as follows: That House Joint Resolution. ^{HJR} 2
Bill No.

DO PASS: DO NOT PASS