

LETTER OPINION
97-L-170

October 21, 1997

Honorable Lyle Hanson
District 48
House of Representatives
337 15th Ave NE
Jamestown, ND 58401

Dear Representative Hanson:

Thank you for your letter requesting an opinion on whether North Dakota Game and Fish Department (Department) staff need a hunting guide license to guide the person who buys the bighorn sheep permit at the annual auction by the Foundation of North American Wild Sheep.

Ninety percent (90%) of the proceeds of the permit sale fund the Bighorn Sheep management program in North Dakota, and 10% of the proceeds is donated to the Foundation for North American Wild Sheep. Only one license is sold in this manner each year. The sale of this license is one important revenue source for maintaining the North Dakota bighorn herd of approximately 250-300 head.

N.D.C.C. § 20.1-02-05 provides in relevant part:

The director may:

. . .

17. Subject to the provisions of chapter 28-32, adopt rules for the licensing of guides or outfitters, and may require records and reports as the director determines necessary. The director may, after due hearing as provided in chapter 28-32, revoke or refuse to renew the license of any person who violates the rules or fails to provide the records and reports. Any person who acts as a guide or outfitter without a license is guilty of a class B misdemeanor.

The rules adopted by the director pursuant to N.D.C.C. § 20.1-02-05(17) for the licensing of guides and outfitters are

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contained in N.D. Admin. Code ch. 30-04-03.¹ The Department staff who guide the buyer of the bighorn sheep permit are game wardens who satisfy or exceed the requirements necessary by rule to become guides.²

Your question addresses N.D. Admin. Code § 30-04-03-01, which states that "[a] license is required for any person to act as a hunting or fishing guide or outfitter."³ N.D. Admin. Code ch. 30-04-03 does not define the term "person." However, N.D.C.C. § 1-01-49(8) defines "person" to mean "an individual, organization, government, political subdivision, or government agency or instrumentality." Thus, without a specific exclusion, the word "person" in N.D. Admin. Code § 30-04-03-01 would include Game and Fish staff.

The second part of the analysis is whether Department staff are acting as a "hunting or fishing guide or outfitter" when they guide the person who buys the bighorn sheep permit at the annual auction by the Foundation of North American Wild Sheep.

"Guide" or "outfitter" means any resident who holds that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person . . . to locate, pursue, or hunt small game, big game, or fur-bearers. . . .

N.D.C.C. § 20.1-01-02(14) (emphasis added).

The Department has not construed N.D. Admin. Code § 30-04-03-01 to require the staff person who guides the person who buys the bighorn sheep permit to be licensed because the staff person is not guiding for personal compensation. The pay of the staff person who performs

¹ The Administrative Rules Committee considered recent amendments to N.D. Admin. Code ch. 30-04-03 at their September 26, 1997 interim meeting. The Department and the Administrative Rules Committee reached agreement on several of the rules about which the committee had questions, including N.D. Admin. Code § 30-04-03-01. Requirements in N.D. Admin. Code § 30-04-03-01 for general liability insurance and for certification for cardiopulmonary resuscitation and standard first aid after December 31, 1998, were repealed.

² This includes the requirements for general liability insurance and certification in adult cardiopulmonary resuscitation and first aid which were repealed on September 26.

³ This language was not repealed by the Department and the Administrative Rules Committee on September 26 and is currently in effect.

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the guide service to the buyer of the permit is not increased based on this job duty. Since the Department staff member who guides the buyer of the bighorn sheep permit is not providing those services for personal compensation, it is my opinion that the staff member is not required to have a hunting guide's license.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jcf/vkk