N.D.A.G. Letter to Jones (Aug. 15, 1990)

August 15, 1990

Mr. Lloyd Jones
Commissioner
North Dakota Game & Fish Department
100 North Bismarck Expressway
Bismarck, ND 58501-5095

Dear Mr. Jones:

Thank you for your May 23, 1990, letter requesting guidance with the interpretation of N.D.C.C. § 20.1-03-11(3). You asked whether that statute limits issuance of gratis hunting licenses to one license per tract of land and if so, you requested advice on how the Game and Fish Department could decide whether to issue a license to the land owner or the lessee.

N.D.C.C. § 20.1-03-11(3) provides: "[u]pon execution and filing of an affidavit describing a minimum of a quarter section . . . of land owned or leased by any person within a district open for hunting of deer, such person shall receive, without charge, a license to hunt deer. . . ." This section does not specifically limit the number of licenses available without charge per tract of land and no cases have interpreted this section. The legislative history also does not clarify what the Legislature's intent regarding this issue. Previously this office has interpreted the intent of this section to permit only one gratis license. Letter from Attorney General Spaeth to Thomas B. Porter, December 5, 1986; Letter from Deputy Attorney General Rolfson to Game and Fish Commissioner Henegar, October 29, 1984; Letter from Assistant Attorney General Pederson to Game and fish Commissioner H.R. Morgan, November 2, 1956. I believe these earlier interpretations to be correct. Thus, it is my opinion that N.D.C.C. § 20.1-03-11(3) authorizes issuance of only one gratis license.

The second issue raised by your letter is whether the landowner or the lessee should receive the gratis license. The right to take game is a property right. See N.D.C.C. § 47-05-01(3) (right to take game an easement); N.D.C.C. § 47-05-02(1) (right to take game a servitude). This property right may be transferred in a lease. Whether the lessor or the lessee is entitled to exercise that right can only be determined by reference to the lease. As a general rule if the lease purports to transfer the right to enter, remain upon and use the property without reference to the type of use, the lessee has obtained the hunting rights. On the other hand if the lease specifically lists certain uses, it is likely the lessor has retained the property right in hunting. In general, though this question can only be resolved on a case-by-case basis.

I recognize that the Department does not have the inclination or the staff to become involved in every dispute between the landowner and his lessee. I therefore, suggest that you consider adopting rules clarifying this statute. The rules could require written

statements in the affidavit concerning whether the land is leased and which person has the hunting rights. Additionally, the Department could require both the lessor and the landowner to submit an affidavit.

Alternatively, you could seek clarifying legislation. The legislation could take various approaches from allowing both the landowner or the lessee to hunt to addressing the potential conflict between multiple landowners.

If you choose to follow either of these courses of action and you need assistance in drafting rules or a bill for the Legislature, please contact Lisa Turrini of my staff.

I trust that this answers your first question and hope that my suggestions concerning your second question have been helpful. If you have further questions, please contact me again.

Sincerely,

Nicholas J. Spaeth

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