

OPINION
67-85

June 9, 1967 (OPINION)

Mr. Russell W. Stuart

Commissioner

Game and Fish Department

RE: Game and Fish - Crossbow Hunting - Persons Eligible

This is in response to your letter of April 10, 1967, in which you requested the opinion of this office with respect to the persons who may qualify to hunt with a crossbow as provided by the provisions of S.B. No. 60, as amended, passed by the Fortieth Legislative Assembly of North Dakota.

Specifically, you asked whether or not a person who has lost the greater portion of four fingers on one hand and is as a consequence rated seventy-five percent disabled with the loss of the use of that hand by the Veterans Administration qualified to hunt with a crossbow. Generally, you ask our opinion on the wording of S.B. No. 60 with respect to the persons who may qualify to hunt with a crossbow.

As introduced, S.B. No. 60 provided that only "amputees" who had one or more arms or legs amputated were granted the privilege of hunting with a crossbow. However, S.B. No. 60 was amended and the body of the bill as finally passed and signed into law by the governor reads as follows:

Any person who is a paraplegic or has lost the use of one or both arms and who otherwise complies with and qualifies under the licensing and other provisions of Title 20 may hunt game with a crossbow."

We believe that our only responsibility here is to determine who is " * * * a paraplegic or has lost the use of one or both arms * * *" and therefore qualifies to hunt with a crossbow.

A paraplegic is defined as one who has paraplegia. "Paraplegia" is defined as follows:

"* * * paralysis, or loss of the power of sensation and motion of the lower part of the body." (The Winston Dictionary-College Edition-1945)

Paralysis of the lower half of the body on both sides, usually caused by disease of the spinal cord." (Webster's New International Dictionary - Second Edition - 1956)

Paralysis of the lower half of the body with involvement of both legs usually due to disease of or injury to the spinal cord." (A Merriam Webster's - New International Dictionary - Third Edition - 1967).

It is apparent that the legislative intent of the amendment to S.B. No. 60 was to expand the classification of persons who may be entitled to hunt with a crossbow. We do not believe that the legislative assembly intended to grant this privilege to only persons who have lost the mobility of the lower portion of their body by virtue of a disease or injury of the spinal cord. We believe, and it is our opinion, that the legislative assembly used the word "paraplegic" as descriptive of an immobile condition on the part of a person which has resulted in the permanent loss of the use of the lower portion of the body.

As to our interpretation of the phrase "has lost the use of one or both arms", we must look to the amendment which deleted the word "amputee", which was described as a person who had one or more limbs amputated, and inserted the words "paraplegic" or has lost the use of one or both arms." This amendment certainly made it clear that the intention was to extend this privilege to one who has, in fact, not lost the arm, but has merely lost the "use of one or both arms."

As to the term "lost the use of one or both arms" we believe the Legislature meant loss of use for hunting purposes specifically with a long-bow.

It is our opinion that if a person is otherwise qualified to use a long-bow, but because of the impairment of one or both arms has lost the "use of one or both arms", he may use a crossbow. As a measure in determining what constitutes the "loss of use of one or both arms" consideration can be given to whether or not the person with the impairment can safely use a longbow. We believe the impairment which may constitute the loss of use of one or both arms is primarily a medical question of fact.

In regard to your specific question, we believe the question of qualification of the particular individual is a question of fact. If the particular individual meets the qualifications to use a longbow, but because of some impairment of the arm cannot use a longbow safely, then we believe you can determine that the particular individual is qualified to hunt with a crossbow.

In determining the persons qualifying, it may be necessary to base your judgment upon the certificate of a doctor and/or the personal inspection and interview of the applicant by a game warden.

HELGI JOHANNESON

Attorney General