

**OPINION
48-74**

August 12, 1948 (OPINION)

GAME AND FISH

RE: Governor's Proclamation

I am in receipt of your letter, dated August 6, 1948, relative to the Governor's power under the provisions of chapter 20-08 of the North Dakota Revised Code of 1943 with respect to his proclamation and the contents thereof.

You state in your letter that in the Governor's proclamation for 1947 appears a section which provides that female or hen pheasants be not killed, and further, that evidence of sex be not destroyed in storage or transit. It appears that there has been some question as to whether the Governor's power of proclamation is far reaching enough to provide there restrictions.

It is to be noted first of all that section 20-0805 provides, in substance, that any proclamation issued by the Governor shall have the force of law. The question now is whether or not the law granting him powers is sufficiently broad to include the provision to which you refer.

It has been held on numerous occasions that it is competent for the state, in granting the privilege of reducing wild game to possession, to prescribe such conditions of enjoyment as are deemed reasonable and necessary to protect the common interest. They are justified on the theory that they have a tendency to take away the incentive for illegal destruction of game and to prevent evasions of the statute against the killing game.

As a matter of public interest and police power, a state may take such means as are reasonably necessary to preserve game from extermination or undue depletion. All reasonable doubts must be resolved in favor of the order and a law or proclamation tending to conserve game should be given such a construction as appears most reasonable and best suited to accomplish its purpose.

Hence, our problem is one of statutory construction to which the general rules apply, and it is my opinion that sections 20-0801 (1) and 20-0803 (2) are sufficiently broad to authorize the Governor's order protecting the female pheasant. A complete disregard for the breeding stock would possibly place such birds in danger of depletion and extinction which would be contrary to the intent of the law. In other words, section 20-0801 must be construed in a practical sense and to protect the pheasant population the Governor may rightfully prohibit the killing of hen pheasants, and may further prohibit the destruction of evidence of sex while in storage or transit.

It is also my belief that you have now sufficiently clarified the provision relative to hunting and taking of migratory waterfowl. The hours are now complete, definite, and specific, and capable of only one construction. Hence, it complies with or is in accord with the

proper manner of legislative enactments.

NELS G. JOHNSON

Attorney General