

**OPINION
49-81**

February 22, 1949 (OPINION)

GAME AND FISH

RE: Responsibility of County Auditor

Re: Chapter 20-03 N.D.R.C. 1943

Your letter of February 21, 1949, re issuance of hunting licenses, has been received by the attorney general and sent to my desk for attention.

It appears from your letter that a certain county auditor delivered a block of hunting license blanks to a hardware dealer and authorized him to issue licenses and collect the fees therefor; that these blanks were received by the dealer on or about September 27, 1948; that the dealer never delivered to the county auditor any of the license fees collected by him for licenses issued by him at any time; that on or about November 3, 1948, the dealer's office was broken into and moneys were stolen, including \$173.00 there kept by him in a separate receptacle, which sum had been collected by him as license fees for licenses issued by him. The question now is: Does the loss resulting from the stealing of this \$173.00 fall upon your department and the State or upon the county auditor and the dealer?

Section 20-0321 R.C. 1943 provides that hunting licenses may be issued by county auditors, as well as by yourself, your deputy, and bonded game wardens. There is no statute which authorizes a county auditor to delegate to any third person the issuance of such licenses, so that this county auditor had no legal right to permit this dealer to issue such licenses. So far as your department is concerned, this county auditor is legally liable to account to you for each and every license blank delivered by you to the auditor. You have no authority to recognize this hardware dealer as one lawfully authorized to issue hunting licenses. You can look only to the auditor for an accounting for license fees collected. Failure of the dealer to account to the auditor is a matter that concerns only the dealer and the auditor. The auditor is legally bound to account to you under the provisions of section 20-0323 N.D.R.C. 1943 for every license fee collected by the auditor, or another for him. For failure to so account, the official bond of the auditor may be resorted to, as provided by section 20-0324. Had the dealer paid to the auditor at the end of each month the license fees collected, so that the auditor could deposit them with the county treasurer, his money would not have been in the office of the dealer and could not have been stolen. Section 20-0321 positively requires the county auditor to deposit all license fees collected with the county treasurer once each month and "not later than three days after the close of the month." Had this law been obeyed, no loss could have been suffered by anyone, and it is not likely that any licenses had been sold during the first three days of November.

It is, therefore, the opinion of this office that the county auditor is legally bound to pay to your department as required by section 20-0323, the full amount

of \$173.00 received by the hardware dealer under his arrangement with the auditor; and that the bond of the auditor may be resorted to for the collection of this money, as provided by law.

WALLACE E. WARNER

Attorney General