

OPINION
50-68

October 25, 1950 (OPINION)

GAME AND FISH

RE: Hunting on Highways

Yours of the twentieth inst., asking for a clarification of the law governing the rights of licensed hunters to hunt on state highways, has been received and referred to my desk.

We had noticed an item in recent newspapers to the effect that the attorney general of Minnesota had recently given it as his opinion that hunting on public highways was permissible in his state. We procured a copy of his opinion. His opinion, however, turns upon the interpretation of statutes of Minnesota relative to the discharge of firearms on Minnesota highways. Minnesota has a statute forbidding shooting big game on its highways. At one time it had a statute forbidding shooting upland game on its highways. This latter law was later repealed. So, now he rules that the present statutes do not prohibit hunting upland game on Minnesota highways. The gist of this opinion is that, in the absence of express statutes forbidding hunting on highways, hunters have a right to shoot game while on a highway.

On examination of the law relating to hunting as found in Corpus Juris Secundum, Volume 38, under the title "Game" and in American Jurisprudence, Volume 24, under the title "Game and Fish Laws," we fail to find any case where the specific question as to the right to hunt on a highway has been considered. However, both these authorities state, in general terms, that a hunter may shoot and take game in any place in which he has a legal right to be so long as he does not infringe on or injure the rights of others, in the absence of a statute limiting this right.

However, a hunter, though standing in a place where he has a right to be, has no right to shoot over the premises of an adjoining owner, or to intentionally frighten game from another's premises, where the owner of such premises has posted signs giving notice that no hunting will be permitted on said land as authorized by section 20-0115 N.D.R.C. 1943.

Further, if a hunter has shot a game bird while the bird is over the highway, the hunter may enter upon such posted land and retrieve such bird. Such entry is permitted by section 20-0119 N.D.R.C. 1943. In making such entry the hunter should not take his gun with him, for entry upon posted land with a gun is forbidden by section 20-0120 N.D.R.C. 1943.

It is our opinion, therefore, that with the limitations hereinbefore set forth, hunters of North Dakota may hunt on highways of the state. This privilege extends not only to state highways but to county and township highways or roads.

ELMO T. CHRISTIANSON

Attorney General