

**OPINION
50-69**

May 23, 1950 (OPINION)

GAME AND FISH

RE: Federal Migratory Waterfowl Stamp

After our conversation of May 19, 1950, I checked into the matter which we discussed, relative to the requirement of a federal migratory waterfowl stamp, the so-called "duck stamp." Your problem, as you outlined it to me, is as follows:

You state that the governor, in his proclamation, rendered North Dakota hunters to have a federal duck stamp attached to their hunting licenses, and you wonder whether this requirement in the proclamation is authorized by the statutes, and what may be done to a hunter who is caught without the stamp and who is at the time hunting migratory waterfowl.

Section 20-0803 of the 1949 supplement sets out the contents of the governor's order or proclamation and reads as follows:

"CONTENTS OF GOVERNOR'S ORDER OR PROCLAMATION RELATING TO THE TAKING OF GAME BIRDS, FISH, AND GAME ANIMALS. An order or proclamation issued by the governor pursuant to the provisions of this chapter shall prescribe, as to each species of game birds, fish, or game animals named therein, the following:

1. In what manner the same may be taken;
2. In what number the same may be taken and possessed and may limit such numbers by sex;
3. In what places the same may be taken;
4. At what times the same may be taken and possessed.

The governor, in his order or proclamation, may provide for the number of big game permits or licenses to be issued for the taking of each species and manner in which such permits or licenses shall be issued for big game only."

You will note that there is no reference in the above section which would authorize the governor to require that a federal duck stamp be attached to a North Dakota license, and it is a general rule of law that where a statute specifically sets forth requirements to be contained in a proclamation the provisions of such statute are exclusive and may not be added to.

It is, therefore, the opinion of this office that the governor is without authority to include in his proclamation a requirement that a federal duck stamp must be possessed by a North Dakota hunter.

Your next question is, (in view of the fact that North Dakota wardens also have commissions from the federal government as federal

wardens), as to who should prosecute a hunter who is apprehended without the stamp, the stamp being required by federal law.

This is strictly a federal offense, and the evidence and complaint should be directed to the federal commissioner in charge of enforcing the federal law. We do not believe that a North Dakota magistrate or court has jurisdiction in such matters.

WALLACE E. WARNER

Attorney General