

OPINION
50-72

August 19, 1950 (OPINION)

GAME AND FISH

RE: Regulation of Migratory Waterfowl

You have asked the opinion of this office as to whether or not your department has authority to grant permits to farmers whose crops are being damaged by migratory waterfowl to kill, frighten, or otherwise herd such migratory waterfowl for the purpose of protecting their crops.

Ever since the case of Missouri v. Holland, 252 U.S. 416, 64 L. ed. 641, 40 S. Ct. 382, 11 A.L.R. 984, decided by the Supreme Court of the United States in 1920, Congress has assumed the exclusive right to control the hunting of migratory waterfowl. See this case as reported in 11 A.L.R. 984 and case note.

In this case the Court held that Congress has the power to regulate the hunting of migratory waterfowl. In our opinion there cannot be two separate sovereignties having this power. And, since laws passed by Congress concerning matters over which it has jurisdiction are the supreme law of the land, it is our opinion that Congress has sole power to regulate the hunting and protection of migratory waterfowl. Therefore, laws made by the state legislature for such purpose are wholly without force and effect.

It is, then, our opinion that your department is without authority to issue permits to such farmers to kill, frighten, or otherwise herd such wild waterfowl as may be damaging the crops on farms in this state. Such power lies wholly within the jurisdiction of the proper federal authority.

ELMO T. CHRISTIANSON

Attorney General