

**OPINION
56-111**

December 6, 1956 (OPINION)

HUNTING

RE: Artificial Lights Prohibited - Exception

We are in receipt of your letter of December 4, 1956, in which you ask whether or not the provisions of section 20-0105 of the North Dakota Revised Code of 1943 (1953 Supplement) would prohibit the owner of land from hiring or delegating to another the power to remove predators from the owner's land with the aid of artificial light. That section reads as follows:

HUNTING WITH ARTIFICIAL LIGHT PROHIBITED; EXCEPTION. Any person who shall pursue, shoot, kill, take or attempt to take any wildlife between sunset of one day and sunrise of the next, with the aid of a spotlight or any other artificial light of any kind, shall be guilty of a misdemeanor, but nothing in this section shall be construed to make it unlawful for any person to use a lantern, spotlight, or other artificial light to assist him in pursuing and shooting on his premises any coyote, fox, skunk, mink, raccoon, weasel, owl, rabbit, or other predatory animal or bird, attacking and attempting to destroy such person's poultry, livestock, or other property, providing, however, that it shall be permissible to use a flashlight of not more than two cells in the aggregate of three volts for the purpose of aiding in the taking of raccoon during the open season on such animal."

We believe this statute is designed to prevent the hunting of wildlife with the aid of artificial light under any circumstances since such a practice is extremely dangerous in view of the limited visibility that occurs under such circumstances. The Legislature wisely made an exception in the case of predators which are attacking and attempting to destroy the property of the person in possession of the premises since without such a provision the person in possession of the premises would be left defenseless against the forays of these animals. Even this is limited to cases in which predators are actually attacking and attempting to destroy the property of the person in possession of the premises. It is apparent that the Legislature is of the opinion that hunting predators at night is even more of a danger to be guarded against than the predators themselves. In other words, while it may be desirable to exterminate predatory animals it is still more desirable to protect human lives by prohibiting this dangerous practice.

We believe, therefore, that hunting wildlife with the aid of artificial light is prohibited in all cases, except where a predator is attacking and attempting to destroy the property of the person in possession of the premises. In such circumstances, however, we believe it would be permissible for the person in possession to call on third persons to aid him in destroying the predators.

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Attorney General