

WILDLIFE CODE:  
CONSERVATION CODE:  
RULES AND REGULATIONS:

Sale of wild rabbits in Missouri prohibited to everyone, resident or nonresident. Farmer in Illinois taking opossums on his farm cannot sell same or the products thereof in Missouri.



March 27, 1957

Honorable William J. Geekie  
Prosecuting Attorney, City of St. Louis  
Municipal Courts Building  
St. Louis, Missouri

Attention: Mr. Sidney Faber, Assistant Prosecuting Attorney.

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"The agents of the Conservation Commission have requested prosecution in certain cases and before proceeding I would like your opinion based upon the following facts.

"1. A farmer from Illinois shoots rabbits and opossum on his own farm in Illinois and on week ends takes them to a farmer's market in St. Louis where he offers them for sale. The farmer does not have a permit under Sec. 45(J) of the Wildlife Code.

"Query: a. Is the farmer protected under the provisions of Sec. 39 of the Wildlife Code?

"b. Does the Code only apply to animals of Missouri or does it also protect animals taken legally or illegally in another state?

"2. Same facts as in Number One but a relative of the farmer does the shooting on the farmer's land and turns them over to the farmer who brought them to the farmer's market and offered them for sale.

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"Query: If the farmer has immunity, does the immunity extend to him in this case since he has not done the actual shooting?"

A well established rule of construction is that all pertinent rules and regulations and laws should be construed together and harmonized if possible. Cairo Bridge Comm. vs. Mitchell, 352 Mo. 1136, 181 S.W.2d. 496.

Section 252.020, MoRS 1949, defines commission, wildlife, and rules and regulations as used in said chapter, and reads:

"As used in this chapter, unless the context otherwise requires:

"(1) The word 'commission' shall mean and include the Conservation Commission as established by the Constitution of Missouri; and the words 'rules and regulations' shall mean those made by said Commission pursuant thereto;

\* \* \* \* \*

"(3) The words 'wild life' shall mean and include all wild birds, mammals, fish and other aquatic and amphibious forms, and all other wild animals, regardless of classification, whether resident, migratory or imported, protected or unprotected, dead or alive; and shall extend to and include any and every part of any individual species of wild life."

Section 252.030, MoRS 1949, provides that ownership and title to wildlife is in the State of Missouri and reads:

"The ownership of and title to all wildlife of and within the state, whether resident, migratory or imported, dead or alive, are hereby declared to be in the state of Missouri. Any person who fails to comply with or who violates this law or any such rules and regulations shall not acquire or enforce any title, ownership or possessory right in any such wild life; and any person who pursues, takes kills, possesses or disposes of any such wild life or attempts to do so, shall be deemed to consent that the title of said wild life shall be and remain in the state of Missouri, for the purpose of control, management, restoration, conservation and regulation thereof."

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Section 252.190, MoRS 1949, makes possession of wildlife contrary to provision of said chapter and rules and regulations of the Commission, unlawful, and any person having possession shall be deemed guilty of a misdemeanor.

Section 252.040, MoRS 1949, further provides that no wildlife shall be pursued, taken, killed, possessed or disposed of except in conformity with rules and regulations of said Commission.

Under Section 38 of the Wildlife Code of Missouri it permits the pursuit, taking, transportation, selling, possession only by a person having the prescribed permit to do so as allowed by said Code or who is specifically allowed by the Code to do so without a permit.

In reply to your first inquiry, the sale of rabbits is not permitted by anyone, resident or nonresident, and therefore it is illegal to sell such rabbits in the State of Missouri.

Under the Wildlife Code, rabbits are game animals and do not come within the definition of fur-bearing animals. Section 55 of the Code defines game animals in the following manner:

"The term 'game animals,' shall include the deer, bear, wild rabbit(which shall include all wild rabbits and hares), red, gray, black and fox, squirrel, and fur-bearing animals."

Fur-bearing animal is defined in the same section and reads:

"Mink, muskrat, opossum, otter skunk(polecat), spotted skunk(civet cat) beaver, raccoon, badger, weasel(ermine) red fox and gray fox."

In this state the products of fur-bearing animals, which have been legally taken and preserved under certain conditions as provided under Section 49, Wildlife Code of Missouri, may be sold by the holder of a fur buyer's permit, or holder of a resident fur dealer's permit. Said section further provides that furs offered for sale by resident hunters, trappers and fur buyers, after a certain date specified in said regulation, shall be held by the fur dealer or buyer and notice given to the representative of the Conservation Commission and disposition shall be made in accordance with the instructions of said representative. All of which, at least, indicates that by reference to resident hunters offering furs for sale, the intent was to exclude all other hunters from selling such products and this would apply to nonresident hunters.

Section 45, (B) (C) (D) of the Wildlife Code requires one to have

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a resident permit in order to sell products of fur-bearing animals.

Under definitions in Section 55, of the Wildlife Code it defines "Legality of wildlife species taken in other states" and reads:

"The laws in effect where wildlife is taken shall determine the legality of the taking and the permitted possession limits; otherwise when such wildlife is transported into Missouri, this code shall apply as soon as such wildlife enters this state, except, however, interstate shipments when neither the point of origin nor point of destination is in Missouri; provided, that the burden of proof shall be upon the person in possession of such shipments to show that such possession or transportation are not in conflict with this code."

Under the foregoing definition a nonresident may possess opossums in Missouri if the laws in effect where said opossums were taken, permitted the taking and possession thereof. However, any further disposition such as sale of said animals or the products thereof must be governed entirely by the Wildlife Code and Laws of Missouri. Therefore, in the absence of any authority under said Wildlife Code or Laws of Missouri authorizing such nonresident hunter to sell opossums in this state it cannot be done.

As to whether he may sell opossums or the products thereof in Missouri simply by reason of being a farmer under the provisions of Section 39, and definition of a farmer under Section 55 of the Wildlife Code, must be answered in the negative because the following definition and regulation, relating specifically to farmers, refers to only farmers who are residents of Missouri:

"Section 39. A farmer, as defined in this code, may take and possess wildlife and may sell the products of fur-bearing animals without permit when done as permitted by this code and only upon the farm where he resides; provided, that a farmer who is under seventeen(17) years of age may transport and sell without permit, within the county where he resides and in any adjoining county, the products of fur-bearing animals legally taken by him on such farm."

"Section 55. Any bona fide owner or lessee of lands, or his permanently employed hired hand, or any member of the immediate household of such owner, lessee or employee within the state, who

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is a citizen of the state and who actually resides upon and operates such land exclusively for agricultural purposes."

CONCLUSION

Therefore, it is the opinion of this Department that the sale of rabbits, that is, wild rabbits, is prohibited to everyone, resident or nonresident, in Missouri. Furthermore, that a farmer taking the opossums on his Illinois farm cannot sell same or the product thereof in the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton  
Attorney General

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