

## GAME AND FISH

## CHAPTER 97

## DIVISION OF GAME AND FISH; GENERAL PROVISIONS

## 97.40 DEFINITIONS.

Amended by L. 1947, c. 300, s. 1, and by L. 1947, c. 609, s. 1.

State has constitutional authority to enact laws necessary for the conservation of game and fish (see notes under applicable sections in Volume I). *State v Rodman*, 58 M 393, 59 NW 1098; *State v N. P. Express*, 58 M 403, 59 NW 1100; *State v Shattuck*, 96 M 45, 104 NW 719; *State v Tower*, 100 M 38; 110 NW 254; *State ex rel v District Court*, 134 M 131, 158 NW 798; *Waldo v Gould*, 165 M 128, 206 NW 46; *Bohman v Gould*, 169 M 374, 211 NW 577.

Personal presence is not essential for the establishment of a domicile through the medium of removal of family and personal effects to a new residence; but in granting a game license care should be exercised, and a resident license should not be granted to an applicant whose sojourn in the state is temporary or transient. 1942 OAG 2, Aug. 11, 1942 (209-H).

Wardens may enter and inspect locker plants where game and fish are customarily stored without warrant, or without reasonable grounds for believing illegal wild animals are stored therein. 1942 OAG 16, Sept. 18, 1941 (208-I-3).

An alien even though he has resided in the state for six months, is not entitled to the status of resident for the purpose of obtaining a license under the game and fish code. 1944 OAG 51, March 31, 1944 (209-A).

A partnership is a legal entity with respect to its connection with game and fish laws and must procure a separate fur buyer's license distinct from those procured by members of the firm. 1944 OAG 52, Jan. 25, 1944 (209-E).

Possession of net on public waters is presumptive evidence of unlawful taking of fish. 1944 OAG 54, May 3, 1944 (211-A-8).

Power of the state to control its natural resources. 11 MLR 129, 233.

Reciprocal and retaliatory legislation in the American States. 21 MLR 371, 389.

## 97.42 STATE OWNERSHIP OF WILD ANIMALS AND AQUATIC VEGETATION.

Ownership of wild animals, so far as they are capable of ownership is in the state, not as a proprietor but in a sovereign capacity. It is within the police power of the state to regulate the taking of wild life; and the state may pass basic laws needed to conserve wild life, and permit its state agencies to regulate such conservation. The state may enact laws of special or local application. (See notes under applicable sections in Volume I). *State v Rodman*, 58 M 393, 59 NW 1098; *Thomas v N. P. Express*, 73 M 185, 75 NW 1120; *Linden v McCormick*, 90 M 337, 96 NW 785; *Realty Co. v Johnson*, 92 M 363, 100 NW 94; *Allbright v Northern Pacific*, 96 M 135, 104 NW 827; *Whittaker v Stangvick*, 100 M 386, 111 NW 295; *Waldo v Gould*, 165 M 128, 206 NW 46; *Bohman v Gould*, 169 M 374, 211 NW 577; *Cohen v Kauppi*, 172 M 469, 215 NW 837; *State v Bush*, 195 M 413; 263 NW 300; *Ohsman v Starkweather*, 214 M 232, 7 NW(2d) 747.

The burden of proof is upon a person in possession of wild animal skins to prove his lawful possession. *Cohen v Gould*, 177 M 398, 225 NW 435.

While it is true that wild life is not a part of the soil as many common forms of profits a prendre are, yet the right to hunt and take game appertain to the land and is a profit flowing from ownership. It may justifiably be regarded as a profit a prendre. While the title to wild life is in the state as trustee, the owner of the land has a qualified property interest in that he has the exclusive right to reduce the game to possession. There is a wide distinction between a profit a prendre and a license. *Minnesota Valley Gun Club v Northline Corporation*, 207 M 126, 290 NW 222.

Because the state is the owner, in trust for the people, of all wild animals, it may impose upon fur dealers reasonable terms and conditions and thus preserve and protect the state's interest in this resource. *State v Stein*, 215 M 311, 9 NW (2d) 763.

#### 97.43 GENERAL RESTRICTIONS.

See notes under sections 97.40 and 97.42.

Harboring wolves in an enclosure is not an offense provided such wolves do not propagate. 1942 OAG 11, Aug. 15, 1941 (210-D-8).

#### 97.44 POSSESSION RESTRICTED.

See notes under sections 97.40 and 97.42.

#### 97.45 TRANSPORTATION RESTRICTED.

Amended by L. 1947, c. 609, ss. 2, 3.

Cases relating to restrictions on transportation and possession by common carriers. (See notes under applicable sections in Volume I). *State v Rodman*, 58 M 393, 59 NW 1098; *State v N. P. Express*, 58 M 403, 59 NW 1100; *State v Chapel*, 64 M 130, 66 NW 205; *Selkirs v Stevens*, 72 M 335, 75 NW 386; *Allbright v Northern Pacific*, 96 M 135, 104 NW 827; *Waldo v Gould*, 165 M 128, 206 NW 46.

#### 97.46 CONFISCATION OF CO-MINGLED GOODS.

Where skins legally taken by an Indian are commingled with others illegally taken, all are contraband and subject to seizure and confiscation. OAG Nov. 25, 1930 (208-H).

#### 97.47 WANTON WASTE.

Under the power of the commissioner to make reasonable rules and reservations to implement the intent of the legislature as expressed in enacted laws, the commissioner may promulgate methods of icing or otherwise preserving fish taken by commercial fishermen or others. 1934 OAG 411, Aug. 8, 1933 (209b).

#### 97.48 GENERAL POWERS OF COMMISSIONER.

HISTORY. 1947, c. 469, s. 1; 1947 c. 609, ss. 4, 5, 6.

Amended by L. 1947, c. 609, ss. 4, 5, and 6.

Where federal and state programs conflict, the federal must prevail. *Minnesota v United States*, 125 F(2d) 636.

The commissioner of conservation may acquire by gift, lease, purchase or condemnation, in the name of the state, lands suitable and desirable for certain designated conservation purposes, without the approval of the executive council. OAG June 6, 1947 (983-M).

#### 97.49 FUNDS.

Both husband and wife must complete the application for a combination resident license. 1942 OAG 1, May 19, 1941 (209).

Under the broad authority of the commissioner to protect wild life he has the power to expend funds appropriated for the protection of wild life irrespective of the cause which threatens to be harmful thereto. OAG June 19, 1946 (9-a-17).

**97.50 POLICE POWERS.**

Amended by L. 1947, c. 609, s. 7.

The game warden may seize and condemn as contraband game wherever it may be found; but it does not follow that the absent, constructive or theoretical possessor may be prosecuted at a place chosen by the prosecutor. *State v Giller*, 138 M 369, 165 NW 132.

The confiscation clauses in section 97.50 are patterned after the federal prohibition law, and do not violate the fourteenth federal amendment. *State v Thorson*, 170 M 349, 212 NW 591; 26 MLR 216.

Independent of any presumption, a wife's ownership of an automobile is established by uncontradicted and undisputed evidence that she purchased the automobile in her own name; that she paid most of the price; that the parties intended that she take title; the purchase invoice indicated she was the sole purchaser; it was registered in her name; carried insurance in her name; and permitted use of the car by the family who used it only by her permission. *State v One Buick*, 216 M 130, 12 NW(2d) 1.

Agents of the division of game and fish may enter and inspect locker plants where game and fish are customarily stored without warrant, or without reasonable grounds for believing illegal wild animals are stored therein. 1942 OAG 16, Sept. 18, 1941 (208-I-3).

A tractor is a motor vehicle and may be confiscated if used for the purpose of transporting deer and moose illegally taken. OAG Jan. 2, 1947 (210-D-2).

**97.52 ASSISTANCE TO AND OBSTRUCTION OF COMMISSIONER.**

While certain sections of the statutes broaden the duties of the county attorney beyond his general duties under section 388.05, he is not required to act as a police officer or detective or to institute criminal proceedings in any case unless evidence or information reasonably sufficient to justify action is brought to his attention. 1942 OAG 189, Nov. 10, 1942 (121-B-7).

**97.54 PROSECUTIONS AND BURDEN OF PROOF.**

Prosecutions under prior laws. (see notes under applicable sections in Volume I).

*Liden v McCormick*, 90 M 337, 96 NW 785; *Allbright v Northern Pacific*, 96 M 135, 104 NW 827; *Waldo v Gould*, 165 M 128, 206 NW 46; *Cohen v Gould*, 177 M 398, 225 NW 435; *Hudson v McCullough*, 182 M 581, 235 NW 537.

**97.55 VIOLATIONS AND PENALTIES.**

Amended by L. 1947, c. 609, s. 8.

Penalties imposed under former laws. (see notes under applicable sections in Volume I). *State v Rodman*, 58 M 393, 59 NW 1098; *State v Poole*, 93 M 148, 100 NW 647; *State v Giller*, 138 M 369, 165 NW 132; *Cohen v Kauppi*, 172 M 469, 215 NW 837; *Lipinski v Gould*, 173 M 559, 218 NW 123.

The provisions of the game and fish laws requiring fur dealers to keep complete book records of all transactions in buying and selling raw furs is a penal statute and its provisions are mandatory and not directory. *State v Stein*, 215 M 308, 9 NW(2d) 763.

The general penalty provision, section 97.55, is applicable to the violations set out in section 100.29. 1944 OAG 47, Oct. 19, 1943 (208-G).