



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 88- 79

The Honorable Alicia Salisbury
State Senator, Twentieth District
1455 S.W. Lakeside Drive
Topeka, Kansas 66604-2556

Re: Forestry, Fish and Game--Fish and Game--
Protected and Unprotected Birds; Mode of Hunting

Synopsis: Proposed regulations relating to falconry (numbered 23-21-1 through 23-21-14) are within the statutory authority conferred upon the Kansas Department of Wildlife and Parks. Cited herein: K.S.A. 32-156; 32-164; 32-215.

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Dear Senator Salisbury:

You request our opinion as to whether proposed regulations relating to falconry (numbered 23-21-1 through 23-21-14) are within the statutory authority conferred upon the Kansas Department of Wildlife and Parks. Proposed regulation 23-21-2 defines falconry as "the taking of small game, game birds and migratory water fowl with a trained raptor." Other regulations provide for the issuance of falconry permits, inspections and certification of facilities, annual reports concerning raptors in possession and hunting activity, and acquisition and marking of raptors.


The validity of the subject regulations relating to falconry must be tested by the following rules laid down in Pork Motel, Corp. v. Kansas Department of Health and Environment, 234 Kan. 374, 378 (1983):

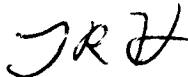
"Rules or regulations of an administrative agency, to be valid, must be within the statutory authority conferred upon the agency. Those rules or regulations that go beyond the authority authorized, which violate the statute, or are inconsistent with the statutory power of the agency have been found void. Administrative rules and regulations to be valid must be appropriate, reasonable and not inconsistent with the law."

In regard to the statutory basis for the falconry regulations, K.S.A. 32-164 authorizes the Kansas Fish and Game Commission to establish by regulations open seasons in which wild birds, game birds, and game animals may be legally hunted, taken, pursued, killed, or possessed in the state of Kansas. K.S.A. 32-215 confers authority upon the Commission to establish open seasons on any species of game, game birds or other birds, and to fix conditions governing the taking the same. K.S.A. 32-156 provides that it shall be unlawful for any person, unless and except as permitted by rule and regulation (of the Department of Wildlife and Parks), to hunt, shoot, take, kill, or catch or have in his or her possession, living or dead, any wild bird or birds or any part thereof.

The above-cited statutes confer authority upon the Kansas Department of Wildlife and Parks to adopt rules and regulations whereby wild birds (including hawks and other raptors) may be taken and possessed, and to adopt regulations which establish the conditions governing the taking of the same. The regulations relating to falconry basically prescribe conditions under which raptors may be taken and possessed, and permit the use of raptors in taking small game, game birds and migratory water fowl. In view of the very broad authority granted by the above-referenced statutes, it is our opinion that proposed regulations relating to falconry (numbered 23-21-1 through 23-21-14) are within the statutory authority conferred upon the Kansas Department of Wildlife and Parks.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General