



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

August 31, 1978

ATTORNEY GENERAL OPINION NO. 78- 282

The Honorable LeRoy F. Fry
State Representative
Little River, Kansas 67457

Re: Forestry, Fish and Game--Fish and Game--Prohibiting
Use Of Snares For The Trapping Of Badgers And Raccoons
[K.A.R. 23-6-1(e)]

Synopsis: Prohibiting the use of snares for badgers and raccoons
is an unauthorized exercise of the Commission's authority
to the extent it contradicts K.S.A. 1977 Supp.
32-158.

* * *

Dear Representative Fry:

You ask for my opinion whether the Kansas Fish and Game Commission has the requisite statutory authority to prohibit the use of "snares" to trap raccoons (*Procyon lotor*) and badgers (*Meles* or *Taxidea*) through administrative regulation.

K.S.A. 32-158 expressly defines fur-bearing animals to include raccoons and badgers. As such they are protected from being pursued, injured, trapped, taken, captured, killed, destroyed, etc. except as may be allowed by law. K.S.A. 1977 Supp. 32-158 and K.S.A. 32-164.

K.S.A. 1977 Supp. 32-158 provides specifically in part thus:

"Any person having the proper state license or exempt by law from having such license, may legally take, during legal open season, fur-bearing animals within the state

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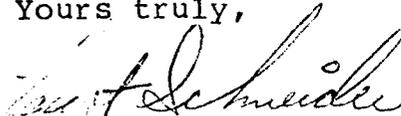
of Kansas by steel traps, dogs or guns, and by any other method which the commission may by regulation establish as legal. Traps may be used to take wild animals and fur-bearing animals only during such legal open trapping season as established by the Commission."

It is clear that the above quoted language provides an exception to the broad language found in the opening paragraph of the same statute as well as the even broader authority granted in K.S.A. 32-164 and K.S.A. 32-215, all of which categorically permit the the Commission to otherwise provide for the lawful methods by which fur-bearing animals may be trapped and taken during established open seasons for the same.

K.A.R. 23-6-1(e) promulgated by the Commission prohibits the use of the "snare" in any dryland set for the purpose of taking, trapping or killing of fur-bearing animals in Kansas. The term "snare" is not defined in the regulation, but is generally defined in *Webster's New Third International Dictionary* (1966) as a "trap." I note in passing that K.A.R. 23-6-1(d) prohibits the use of steel leg-hold traps having serrated or toothed jaws, and K.A.R. 23-6-1(e) also prohibits the use of body-gripping (conibear types) traps.

It is clear then that these prohibitions contradict the authorization for such devices found at K.S.A. 1977 Supp. 32-158. Accordingly, I must conclude that the specific express authorization to take fur-bearing animals by the use of "steel traps" and "traps" generally during open seasons qualifies the Commission's general authority to otherwise promulgate regulations to govern the trapping of such animals. Thus, the provisions of K.A.R. 23-6-1(d) and (e) exceed the Commission's authority and are therefore void and unenforceable. Any approval heretofore given for such regulation is hereby withdrawn.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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