



STATE OF KANSAS

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March 12, 1981

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ATTORNEY GENERAL OPINION NO. 81- 68

Mr. Fred Warders
Assistant Director
Kansas Fish and Game Commission
Box 54A, Rural Route 2
Pratt, Kansas 67124

Re: Forestry, Fish and Game--Fish and Game--Forfeiture
of License; Seizure and Possession of Articles Used
in Violating Act; Sale

Synopsis: The duty and authority of the director of the Kansas
Fish and Game Commission to sell "confiscated" fur-
bearers and pelts, as set forth in K.S.A. 32-130a,
may be delegated to game protectors and other assistants,
which game protectors and assistants are appointed
pursuant to the provisions of K.S.A. 74-3302. Cited
herein: K.S.A. 32-130a, 74-3302.

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Dear Mr. Warders:

You request our interpretation of K.S.A. 32-130a. Specifically,
you ask whether the director of the Kansas Fish and Game Commission
may "delegate" authority to sell "confiscated" furs and furbearing
animals to game protectors and other employees of the Commission.

K.S.A. 32-130a provides as follows:

"Every person, firm or corporation convicted
of violating any fish, game or trapping law
shall, in addition to the penalties prescribed,
at the discretion of the court forfeit his,

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her or its license to indulge during the time covered by such license in the sport or employment in respect of which violation of law or rules or regulations occurred. And the director of the forestry, fish and game commission and his authorized deputy and county game protector are hereby empowered and directed to seize and possess any fish, game, fur-bearers, pelts or parts thereof taken, possessed, sold or transported unlawfully, and any steel trap, snare, or other like device, or boat used in capturing, killing or taking fish, game and/or fur-bearing animals unlawfully or during closed season and having reduced the same to possession, the said officers are authorized and directed to deposit the same with the director of the forestry, fish and game commission, who shall thereupon sell the same for the best possible price, and account for and pay the proceeds to the state treasurer for deposit in the forestry, fish and game commission fund. (Emphasis added.)

The duty and power to sell "confiscated" furbearers and pelts is clearly granted to the director under the above-quoted statute. The authority of the director to delegate such duty to game protectors and other employees depends upon whether the duty is characterized as "ministerial" or "discretionary." In Moore v. Wilson, 84 Kan. 745, 747 (1911), the applicable rule was stated as follows:

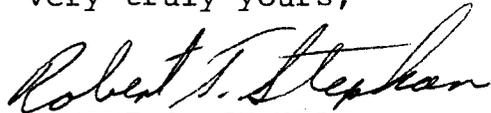
"The general rule is that official duties of a ministerial character may be delegated to another but those requiring the exercise of judgment and discretion can not, unless specific statutory authority to do so is given."

In our judgment, the selling of fur-bearers, pelts, and parts thereof, pursuant to K.S.A. 32-130a, is a ministerial duty. The statute provides that the furs shall be sold for the best possible price, and the director exercises no discretion or judgment as to whether or not a sale is to occur. Although it might be contended that some judgment is necessary to determine "the best possible price," the discretionary or judgment factor inherent therein is so minimal that, in our opinion, the act remains basically ministerial. For that reason, we conclude that the duty and authority of the director of the Kansas Fish and Game Commission to sell "confiscated"

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furbearers and pelts, as set forth in K.S.A. 32-130a, may be delegated to game protectors and other assistants, which game protectors and assistants are appointed pursuant to the provisions of K.S.A. 74-3302.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm