

N.D.A.G. Letter to Hanson (April 16, 1991)

April 16, 1991

The Honorable Lyle Hanson
337 15th Avenue NE
Jamestown, ND 58401

Dear Representative Hanson:

Thank you for your April 8, 1991, letter requesting an opinion as to whether the Game and Fish Department has the authority to require bighorn sheep hunters to attend a specific school prior to hunting bighorn sheep in this state, or whether a statutory enactment would be required for this purpose.

Every administrative agency has authority to adopt rules that are in conformity with statutes administered or enforced by the agency. North Dakota Century Code (N.D.C.C.) § 28-32-02(1). The Game and Fish Department or the Game and Fish Commissioner would therefore be able to adopt a rule requiring bighorn sheep hunters to complete a specific course on bighorn sheep hunting if there was statutory authority for the Department or Commissioner to require completion of such a class. However, in this case, there is no statute concerning game or big game in general, or bighorn sheep in particular that would authorize the adoption of rules requiring bighorn sheep hunters to attend a specific course on bighorn sheep hunting.

However, in N.D.C.C. § 20.1-08-04(2) the governor is authorized to declare "the manner of issuance" of big game licenses or special permits when a limited number of such licenses or permits are to be issued. Therefore, when a limited number of bighorn sheep licenses are issued, the governor's proclamation may include special conditions for issuance of those licenses including attending a special course on bighorn sheep hunting, if such a course existed. This requirement would be temporary, of course, lasting the length of that season only. It would be more satisfactory to enact legislation if implementation of this requirement was to be permanent.

In addition, completion of a general hunter education course is required before obtaining any hunting license in this state pursuant to N.D.C.C. § 20.1-03-01.2 (if the applicant for a license was born after December 31, 1961). The Game and Fish Commissioner is required to prescribe the course material to be used in this hunter education course pursuant to N.D.C.C. § 20.1-03-01.1, and therefore, could include instruction in a variety of areas concerning hunting, including hunting bighorn sheep, if he thought it was necessary.

Therefore, I conclude that as a temporary measure, the governor may include a requirement for attendance in a special bighorn sheep hunting course in his proclamation. However, a more permanent solution would be to enact a statute to authorize the

Commissioner to promulgate rules requiring bighorn sheep hunters to attend a specific school in addition to the hunter education course already required by law.

Sincerely,

Nicholas Spaeth

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