

N.D.A.G. Letter to Henegar (Sep. 1, 1992)

September 1, 1992

The Honorable Dale L. Henegar
N.D. House of Representatives
2421 Avenue C East
Bismarck, ND 58501

Dear Representative Henegar:

Thank you for your July 31, 1992, letter regarding the aggregate upland game bird bag limit and turkey licenses.

Your first question is whether the Game & Fish Department exceeded their authority as stated in North Dakota Century Code ("N.D.C.C.") § 20.1-08-03 when establishing the aggregate bag limit for upland game birds during the 1991-92 season. Based on my review, the statutory aggregate bag limit was exceeded.

The 1991-92 Small Game-Furbearer Proclamation as signed by the governor indicates that "upland game" shall include grouse, Hungarian partridge, pheasants, and tree squirrels. N.D.C.C. § 20.1-08-03 states:

Limitations on governor's powers. The governor may not establish bag limits on upland game birds which exceed fifteen birds in the aggregate.

Given the definition of upland game as contained in the proclamation, it appears that the aggregate bag limit of Hungarian partridge, sharp-tailed grouse, rough grouse, and cock pheasants was sixteen from October 21, 1991, to January 5, 1992. This is an apparent violation of N.D.C.C. § 20.1-08-03. I notified the Game & Fish Department of the apparent exceedence of the aggregate bag limit requirement. The Department has informed me that it will address this through a new proclamation.

Your second question involves the legality of the governor setting aside a number of turkey licenses for visiting VIPs during the past season. N.D.C.C. § 20.1-04-07 describes the governor's authority regarding the taking of wild turkeys. It states:

The governor may, by proclamation, provide for a permit season to take wild turkeys in manner, number, places, and times deemed in the state's best interests.

The governor has the authority, by proclamation, to provide for the taking of wild turkeys in a manner deemed to be in the state's best interest. This includes the authority to establish a number of licenses for visiting VIPs. However, if the establishment of these type licenses

would endanger management of the turkey population, the activity would not be in the state's best interest.

Sincerely,

Nicholas J. Spaeth

wjd/cb