

Chapter 496

Application, Administration and Enforcement of Game and Fish Laws

Chapter 496

ATTY. GEN. OPINIONS: Regulation of stream flow, 1962-64, p 117.

496.005

CASE CITATIONS: *Maison v. Confederated Tribes of the Umatilla Indian Reservation*, (1963) 314 F2d 169; *Klamath and Modoc Tribes v. Maison*, (1964) 338 F2d 620.

ATTY. GEN. OPINIONS: Fishing by jerking hooks into fish as prohibited, 1920-22, p 170; bear as a game animal, 1924-26, p 432; persons employed to operate boats on lake, to take out fishing parties as within the term "guide," 1924-26, p 600; sale of salmon caught with a hook and line below the lower dead line near the mouth of the Rogue River, 1926-28, p 324; open season for fishing for trout and steelheads in Rogue River and its tributaries, 1926-28, p 379; striped bass as a game fish, 1928-30, pp 163, 468; surf fish as game fish, 1928-30, p 256; eligibility of members of Armed Forces for hunting and angling licenses, 1942-44, p 8; residence for hunting or angling license as actual rather than domiciliary, determination of the state of residence or nonresidence as of the time the license is issued, holding a residence license and at the same time owning an automobile registered in an adjoining state, 1942-44, p 389; nonapplication of salmon-steelhead tagging regulations to fish caught in the Pacific Ocean beyond three-mile limit, 1950-52, p 244; resolving differences in conflicting proposals of the fish and game commissions regarding salmon and steelhead, 1964-66, p 332.

496.010

ATTY. GEN. OPINIONS: Resolving differences in conflicting proposals of the fish and game commissions regarding salmon and steelhead, 1964-66, p 332; poundage fee on steelhead taken incidentally, (1969) Vol 34, p 743.

496.020

ATTY. GEN. OPINIONS: Trespassers on uninclosed lands within Klamath Indian Reservation, 1954-56, p 172; trustee managed property as an Indian Reservation, 1960-62, p 313.

496.025

ATTY. GEN. OPINIONS: Poundage fee on steelhead taken incidentally, (1969) Vol 34, p 743.

496.130

ATTY. GEN. OPINIONS: Changing bag limits before "the next stated meeting" when no emergency exists, 1948-50, p 45; resolving differences in conflicting proposals of the fish and game commissions regarding salmon and steelhead, 1964-66, p 332.

496.135

ATTY. GEN. OPINIONS: Authority to determine personnel salaries, (1970) Vol 34, p 977.

496.145

ATTY. GEN. OPINIONS: Authority to contract for services of commercial fisherman to remove undesirable fish, 1950-52, p 333.

496.160

NOTES OF DECISIONS

By the enactment of statutes concerning hunting and taking of game birds the state has pre-empted the area of regulation by local ordinance. *Fischer v. Miller*, (1961) 228 Or 54, 363 P2d 1109.

Limitations on states power to regulate Indian's fishing rights applies to the type of gear which they may use as much as to the times at which they may fish. *Sohappy v. Smith*, (1969) 302 F Supp 899.

State may use police power only to the extent necessary to prevent the exercise of treaty fishing rights in a manner that will imperil the continued existence of the fish resource. *Id.*

To prove necessity, the state must show there is a need to limit the taking of fish and that the particular regulation sought to be imposed upon the exercise of the treaty right is necessary to the accomplishment of the needed limitation. *Id.*

FURTHER CITATIONS: *Confederated Tribes of the Umatilla Indian Reservation v. Maison*, (1967) 262 F Supp 871.

ATTY. GEN. OPINIONS: Establishment of a wild life display at the Olympic games, 1930-32, p 559; transfer of funds to State Police Department from the Game Protection Fund, 1932-34, p 233; enjoining the polluting of streams by municipalities and industries as within the authority of the commission, 1934-36, p 636; authority of commission to close road constructed by it to connect state property with public highway despite permissive use of road by the public, 1942-44, p 357; authority of commission to purchase a building in Portland for the storage of trucks and other equipment and for other purposes of the commission in the discharge of its official functions without obtaining the consent of the Board of Control, 1944-46, p 358; authority to pay commercial fisherman, under contract for his services, 75 percent of the proceeds from the sale of game fish, 1950-52, p 333; nonapplication of salmon-steelhead tagging regulations to fish caught in the Pacific Ocean beyond three-mile limit, 1950-52, p 244; commission right to engage in farming, 1962-64, p 37; regulation of stream flow, 1962-64, p 117; control of grazing on game commission lands, 1962-64, p 470; resolving differences in conflicting proposals of the fish and game commissions regarding salmon and steelhead, 1964-66, p 332; application to unbranded horses run-

ning at large on unenclosed public lands, (1971) Vol 35, p 720.

LAW REVIEW CITATIONS: 1 WLJ 148, 152.

496.170

NOTES OF DECISIONS

By the enactment of statutes concerning hunting and taking of game birds the state has pre-empted the area of regulation by local ordinance. *Fischer v. Miller*, (1961) 228 Or 54, 363 P2d 1109.

FURTHER CITATIONS: *Confederated Tribes of the Umatilla Indian Reservation v. Maison*, (1967) 262 F Supp 871.

496.175

ATTY. GEN. OPINIONS: Nonapplication of salmon-steelhead tagging regulations to fish caught in the Pacific Ocean beyond the three-mile limit, 1950-52, p 244.

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ATTY. GEN. OPINIONS: Resolving differences in conflicting proposals of the fish and game commissions regarding salmon and steelhead, 1964-66, p 332.

496.190

ATTY. GEN. OPINIONS: Commission's authority to adjourn stated meetings and draft regulations later in the month, 1940-42, p 576; changing bag limits when no emergency exists, 1948-50, p 45; application to unbranded horses running at large on uninclosed public lands, (1971) Vol 35, p 720.

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ATTY. GEN. OPINIONS: Changing bag limits when no emergency exists, 1948-50, p 45.

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ATTY. GEN. OPINIONS: Changing bag limits when no emergency exists, 1948-50, p 45.

496.215

ATTY. GEN. OPINIONS: Authority of commission to modify its regulations except at a stated meeting unless there is an emergency, 1940-42, p 576; the opening of reserves as subject to the statutory provisions for open seasons, 1942-44, p 57; changing bag limits when no emergency exists, 1948-50, p 45.

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ATTY. GEN. OPINIONS: Constitutionality of this section, 1950-52, p 110.

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ATTY. GEN. OPINIONS: Commission control of gross proceeds from sales by commercial fisherman serving commission under contract, 1950-52, p 333.

496.325

ATTY. GEN. OPINIONS: Lease or sale by State Land Board to game commission of overflow lands for boat slips, 1956-58, p 32; resolving differences in conflicting proposals of

the fish and game commissions regarding salmon and steelhead, 1964-66, p 332.

496.340

ATTY. GEN. OPINIONS: Authority of game commission to pay counties sums of money in lieu of taxes for land acquired as feeding grounds for big game animals, 1952-54, p 133.

496.405

ATTY. GEN. OPINIONS: Authority to contract for services of commercial fisherman to remove undesirable fish, 1950-52, p 333; authority of game commission to pay counties sums of money in lieu of taxes for land acquired as feeding grounds for big game animals, 1952-54, p 133; commission right to engage in farming, 1962-64, p 37.

496.410

ATTY. GEN. OPINIONS: Authority of commission to pay counties money in lieu of taxes for land acquired as feeding grounds for game animals, 1952-54, p 133; fixing price for real property acquired from State Land Board, 1958-60, p 178.

496.505

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496.510

ATTY. GEN. OPINIONS: Transfer of funds from the Game Protection Fund account to the General Fund for the use of the State Police Department, 1932-34, p 233.

496.605

ATTY. GEN. OPINIONS: Enforcement of laws relating to game fish by the commission, 1946-48, p 541.

496.610

ATTY. GEN. OPINIONS: Members of United States Fish and Wildlife Service as deputy game wardens, 1954-56, p 184.

496.615

ATTY. GEN. OPINIONS: Appointing members of United States Fish and Wildlife Service as deputy game wardens, 1954-56, p 184.

496.645

ATTY. GEN. OPINIONS: Proposed legislation to share game law enforcement with State Police, 1950-52, p 120.

496.660

NOTES OF DECISIONS

This section was intended to warrant a reasonable search of the places enumerated by a police officer. *State v. Evans*, (1933) 143 Or 603, 22 P2d 496.

In searching, without a search warrant, woods and hunting camps which he has reason to believe contain evidence of a violation of the game law, a state police officer, game division, was acting within the scope of his duties. *Id.*

Where an officer had been informed by the forest ranger

of the entry into a forest reserve by the defendants, had met the defendants near their camp and noticed blood upon their clothing, taking into consideration the season of the year and all the circumstances, the jury was warranted in believing that the officer had reasonable grounds for making a search of the defendants' camp without a search warrant. *Id.*

FURTHER CITATIONS: *State v. Krogness*, (1963) 238 Or 135, 388 P2d 120; *United States ex rel. Krogness v. Gladden*, (1965) 242 F Supp 499.

ATTY. GEN. OPINIONS: Release of arrested person as within power of officer charged with enforcement of fish and game laws, 1930-32, p 440; going on private land to salvage marooned game fish as within the authority of the game commission, 1936-38, p 350; authority of officers to search a private locker in a cold storage plant without a search warrant, 1928-30, p 76, 1936-38, p 578; game commission as enforcing certain laws on the authority of the state police, 1950-52, p 120; advising person regarding game inspection, 1966-68, p 54.

496.680

NOTES OF DECISIONS

Raising game without a permit as required by this section does not affect the title to the animals. *Belanger v. Howard*, (1941) 166 Or 408, 112 P2d 1022.

ATTY. GEN. OPINIONS: Custody of articles used in evidence in prosecution for violation of game laws, 1924-26, p 602; nonownership of apparatus by persons arrested as affecting confiscation, 1934-36, p 555; custody of rifles belonging to violators of fish and game laws, 1938-40, pp 99, 155; authority of justice of peace to order that confiscated game be given to charitable institution, 1938-40, p 541; authority of game commission to confiscate minks and pelts sold without breeder's permit, 1938-40, p 607.

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ATTY. GEN. OPINIONS: Assessment of costs by justice of the peace in assessing fine for violation of game code, 1920-22, p 611; mandamus as proper remedy to compel court to collect and pay over fines and forfeitures imposed under fish and game laws, 1936-38, p 110.

496.905

ATTY. GEN. OPINIONS: Collection of assessment for police training with bail deposit, (1971) Vol 35, p 740.

496.990

ATTY. GEN. OPINIONS: License agent who knowingly issues a resident license to a nonresident, 1958-60, p 295; advising person regarding game inspection, 1966-68, p 54.

LAW REVIEW CITATIONS: 1 WLJ 148, 152.