

February 49/2

The State of South Carolina



Office of the Attorney General

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August 12, 1992

The Honorable Larry A. Martin
Member, House of Representatives
Post Office Box 247
Pickens, South Carolina 29671

Dear Representative Martin:

In a letter to this Office you indicated that consideration is being given to proposing an amendment to the State Constitution to "guarantee the right of our State's citizens the right to hunt game." Referencing such you have raised several questions regarding such an amendment.

You first asked whether there is any present language in the State Constitution that addresses the issue of hunting game. Based upon my review, I am unaware of any language specific to such sport. Generally, the regulation of the sport of hunting is by statute. See, S.C. Code Ann. §§50-1-10 et seq. As expressed in a prior opinion of this Office, 1970 Opin. Atty. Gen. No. 2809,

(t)he right of the individual to take title to fish and game is a qualified one in that it is a privilege granted by the State, and may be taken away or limited as the State sees fit.

Such is consistent with §50-1-10 which states

(a)ll wild birds, wild game, and fish, except fish in strictly private ponds and lakes and lakes entirely segregated from other waters or

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held and grown in bonafide aquaculture operations are the property of the State.¹

It is generally held that reasonable statutes regulating the taking of wild game are not violative of due process rights. 16D C.J.S. Constitutional Law, §1416 p. 650.

You next questioned how specific an amendment would have to be to preserve and insure hunting as a sport in this State. You also asked whether the many forms of hunting presently allowed would have to be enumerated in order to be protected.

Obviously, specificity is desirable in any constitutional amendment and therefore, the more specific an amendment, the less chance of ambiguity in its construction. To avoid confusion, consideration may be given to outlining exactly what forms of hunting would be covered in an amendment. In proposing an amendment, consideration would have to be given to additional issues which may be impacted, such as the applicability of any constitutional provision to nonresidents and the impact on the property rights of private landholders.

¹As expressed in 1970 Opin. No. 2809

Fish and game are classified in the law, largely because of their migratory characteristics and want of fixed habitats, as animals ferae naturae. Their ownership, while they are in a state of freedom, is in the State in its sovereign capacity as the representative and for the benefit of all its people in common. As soon as the fish and game are reduced to the possession of the hunter and fisherman lawfully taking them, their ownership passes to the possessor. The title acquired by the legal capture of the fish and game is conditional upon the continuance of actual possession. The instant the fish and game escape from its captor, such captor's title is gone, and the ownership of the State is resumed.

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If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:klw

REVIEWED AND APPROVED BY:



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