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#95011
NO.
STATE OF NEBRASKA
OFFICIAL
FEB 13 1995
DEPT. OF JUSTICE

DATE: February 13, 1995

SUBJECT: Authority of Nebraska Game and Parks Commission to Enter Into Reciprocal Agreement with South Dakota to Conduct Joint Elk Hunting Season

REQUESTED BY: Rex Amack, Director
Nebraska Game and Parks Commission

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to whether the Nebraska Game and Parks Commission [the "Commission"] has the authority to enter into a "Reciprocal Agreement" with South Dakota to conduct a joint elk hunting season. As part of the Commission's wildlife management policy, it has determined that it is appropriate to establish a limited elk hunting season to reduce the population of a herd in a defined area in northern Boyd County, Nebraska. The herd regularly crosses the border between South Dakota and Nebraska. Because of its transitory nature, the Commission has determined that "the only efficient way to adequately reduce numbers using hunting would be to hold a joint season with South Dakota." Thus, the Commission proposes to enter into an agreement with South Dakota under which concurrent elk hunting seasons would be conducted in a limited area on either side of the Nebraska-South Dakota border. Under the proposed agreement, elk hunting permits issued by the Commission and the South Dakota Fish and Game Department would be mutually recognized within the defined area encompassed by the agreement, allowing a licensed South Dakota resident to legally hunt elk in Nebraska, and allowing a licensed Nebraska resident to legally hunt elk in South Dakota. You have asked us to determine whether the Commission may "legally enter into such an agreement with South Dakota under current law. . .?"

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You note in your letter that Nebraska has held limited elk hunting seasons in prior years under the authority provided under Neb. Rev. Stat. § 32-715 (Cum. Supp. 1994). Section 32-715 generally governs the Commission's issuance of permits to hunt and kill deer, antelope, and elk. Subsection (3) of § 32-715 provides, in pertinent part:

> The commission may issue permits for the hunting and killing of elk and may establish separate and, when necessary, different regulations therefor within the limitations prescribed in subsection (1) of this section for the taking of deer. Permits to hunt and kill elk issued pursuant to this subsection shall not be issued to nonresidents. . . . (emphasis added).

The general powers of the Commission are set forth in Neb. Rev. Stat. § 81-805 (1994). In addition to numerous other powers granted the Commission under this statute, the Commission is authorized to "enter into agreements with other states bordering on the Missouri River providing for reciprocal recognition of licenses, permits, and laws of the agreeing states." *Id.*

The meaning of a statute is to be ascertained, if possible, from the language of the act. ***In re Application A-16642,*** 236 Neb. 671, 463 N.W.2d 591 (1990). In the absence of anything indicating to the contrary, statutory language is to be given its plain and ordinary meaning. ***State v. Matthews,*** 237 Neb. 300, 465 N.W.2d 763 (1991). Here, § 81-805 plainly provides that the Commission may "enter into agreements with other states bordering on the Missouri River providing for reciprocal recognition of licenses, permits, and laws of the agreeing states." There is no doubt that South Dakota is a state bordering on the Missouri River. In our view, the statutory language authorizes the Commission to enter into an agreement with South Dakota providing for reciprocal recognition of elk hunting permits issued by the respective states.

It is true that § 32-715, which provides for the issuance of permits by the Commission to hunt elk in Nebraska, provides that "[p]ermits to hunt and kill elk issued pursuant to this subsection shall not be issued to nonresidents." Neb. Rev. Stat. § 32-715(3). We do not believe that this provision precludes the Commission from entering into the proposed reciprocal agreement with South Dakota. This provision precludes permits to hunt elk from being "issued pursuant to this subsection" to nonresidents. By entering into the proposed reciprocal agreement authorized under § 81-805, the Commission is not issuing any permit under § 32-715 to a nonresident; rather, it is merely granting the reciprocal recognition authorized under § 81-805. Thus, this portion of § 32-715 is not applicable to the Commission's exercise of its authority

to enter into reciprocal agreements. There is no conflict between these provisions.

Based on the foregoing, it is our opinion that the Commission has statutory authority to enter into a reciprocal agreement with the South Dakota Fish and Game Department to conduct a joint elk hunting season along the South Dakota-Nebraska border under the circumstances outlined in your letter. We express no opinion as to the authority of the South Dakota Fish and Game Department to enter into such an agreement. If a question exists as to the South Dakota Department's authority, it should be addressed by the Department's legal representative.

Very truly yours,

DON STENBERG
Attorney General

L. Jay Bartel
Assistant Attorney General

07-01-14.op

APPROVED BY:

Attorney General