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PHEASANTS HELD IN PENS, WITH THE SOLE INTENT OF RELEASING THEM FOR HUNTING DURING THE HUNTING SEASON, ARE NOT DOMESTIC FOWLS OR POULTRY—§955.29, R.C.

SYLLABUS:

Pheasants held in pens, with the sole intent of releasing them for hunting during the hunting season, are not domestic fowls or poultry within the meaning of Section 955.29, Revised Code.

Columbus, Ohio, March 24, 1961

Hon. Lynn B. Griffith, Jr., Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Are pheasants held in pens, with the intent of releasing them for hunting during the hunting season, domestic fowls or poultry within the meaning of O.R.C., 955.29.”

Section 955.29, Revised Code, reads in part as follows:

“Any owner of horses, sheep, cattle, swine, mules, goats, domestic rabbits, and domestic fowls or poultry, having an aggregate value of ten dollars or more which have been injured or killed by a dog not belonging to such owner or harbored on his premises, in order to be entitled to enter a claim for damages must notify a member of the board of county commissioners or dog warden * * *”

A somewhat similar question was presented and answered in Opinion No. 3607, Opinions of the Attorney General for 1954, page 105. There, the birds in question were homing pigeons kept for the sole purpose of racing. That opinion cited the case of *Bartels vs. State*, 91 Neb. 575, which defined “poultry” as follows:

“‘Poultry’—defined as domestic fowls raised for the table or for their eggs or feathers, including pigeons, if reared for the table.”

In Opinion No. 3607, *supra*, the then Attorney General considered the history of the section and stated that the purpose of the law is to protect the owners of livestock and the owners of "domestic fowls and poultry" against injury to such animals which were ordinarily reared either for food, or for some valuable by-product, or for assistance in producing that by-product. The first paragraph of the syllabus of that opinion reads:

"Homing pigeons propagated and kept for the sole purpose of racing, are not 'domestic fowls or poultry', within the purview of Section 955.29, Revised Code, relating to payment of damages to the owner of certain livestock and domestic fowls or poultry which are killed or injured by dogs, and the county commissioners are not authorized by law to pay damage claims for the killing or injury of such pigeons."

The only change in the statute since the rendering of the aforementioned opinion was made in October, 1955 when a further classification of animals, namely, "domestic rabbits" was included in the statute. That amendment does not affect the question here presented.

In determining the instant question, thought must be given to the type of bird life involved. For example, an eagle, though caught and trained while young, could never come within the meaning of the statute because it would be, at most, a "domesticated fowl", not "domestic fowl" as the statute requires. Quoting further from Opinion No. 3607, *supra*, it was said at page 107:

"It is also admitted that almost any wild bird can be domesticated, but the statute does not speak of 'domesticated fowl' but rather of 'domestic fowls', meaning, as I see it, the *class of fowls* which normally make their home on a farm, and, as indicated by the above definitions of propagated and fattened for the table and for their eggs, feathers, etc."

Second, as a corollary aiding in the determination, thought must be given to the purpose for which the birds are being used or raised. While it is true that many of the pheasants in question may ultimately be consumed for their food value, it is also true that the immediate purpose to which they are to be put is their release into their natural wild form so as to furnish sport and pleasure to hunters in the area. These pheasants are not being raised for their food value or for a by-product or some assistance in producing a by-product nor are these pheasants raised for the usual purpose that poultry is raised on a farm.

In view of the foregoing, I think that a pheasant that is not raised primarily and directly for its food value or for some by-product thereof, is not "a domestic fowl or poultry" within the meaning of Section 955.29, Revised Code.

Answering your specific question, therefore, it is my opinion and you are advised that pheasants held in pens, with the sole intent of releasing them for hunting during the hunting season, are not domestic fowls or poultry within the meaning of Section 955.29, Revised Code.

Respectfully,

MARK McELROY

Attorney General
