

**LETTER OPINION  
2007-L-13**

August 13, 2007

The Honorable Lyle Hanson  
State Representative  
337 15th Avenue NE  
Jamestown, ND 58401-3830

Dear Representative Hanson:

Thank you for your letters of July 11 and July 16, 2007, inquiring about the process by which the North Dakota Game & Fish Department (hereafter "Department") issues deer hunting licenses. More particularly, you note that the Department's application forms for the deer license lottery and for gratis deer licenses each contain a June 6, 2007, deadline. The Department adheres to the deer license lottery deadline but makes exceptions to the deadline for gratis deer licenses. You ask about the Department's authority to make such exceptions. For the reasons indicated below, it is my opinion that the Department may establish a June 6, 2007, application deadline to initially consider allocations of gratis deer licenses and may extend the deadline to fill remaining gratis deer licenses. It is my further opinion that the Department's allocation of gratis deer licenses to those applying after June 6, 2007, must be nondiscriminatory, that is, on a first-come first-served basis.

**ANALYSIS**

No person may hunt deer without an appropriate license issued by the Department.<sup>1</sup> License fees are set by law,<sup>2</sup> and the number of deer hunting licenses issued is set by the Governor's proclamation.<sup>3</sup> Section 20.1-03-11(2), N.D.C.C., provides that the number of deer hunting licenses issued may not exceed the number authorized in the proclamation. According to the 2007-2008 Governor's deer hunting proclamation, persons applying to receive deer gun licenses drawn by lottery on payment of a fee

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<sup>1</sup> N.D.C.C. §§ 20.1-03-02; 20.1-03-11.

<sup>2</sup> N.D.C.C. § 20.1-03-12.

<sup>3</sup> N.D.C.C. § 20.1-08-04.

must submit an application to the Department by June 6, 2007.<sup>4</sup> The application deadline serves an administrative purpose -- to issue licenses in a prompt and orderly manner under the lottery system. The proclamation further provides that “[a]fter the lottery drawing, unsuccessful applicants may apply for any remaining licenses which will be issued by lottery . . . on a . . . first come-first served basis.”<sup>5</sup>

An exception to payment of a fee to obtain a license to hunt deer (hereafter a “gratis deer license”) is contained in N.D.C.C. § 20.1-03-11(3). Unlike the situation for a deer gun license, the proclamation does not contain a deadline to apply for a gratis deer license under N.D.C.C. § 20.1-03-11(3), nor does it extend the period to fill the remaining available gratis deer licenses. The Department nevertheless requires applicants for gratis deer licenses to apply by June 6, 2007. While the law does not require the Department to establish a date certain to apply for a gratis deer license, the Department contends that the deadline is useful to allow it to efficiently allocate licenses and to serve administrative needs. About 15,000 gratis licenses are available this hunting season.<sup>6</sup> The licenses are allocated first to applicants who meet the June 6, 2007, deadline, and if any gratis licenses remain, the Department issues additional licenses on a first-come first-served basis.<sup>7</sup> The proclamation does not preclude the Department from extending the time to fill the remaining gratis licenses. While the application deadline helps the Department allocate licenses, issuing the remaining licenses to those who did not meet the application deadline furthers the need to control the burgeoning deer population and furthers the state policy to thank landowners for their contributions to wildlife habitat and to compensate them for the damages wildlife can cause landowners.<sup>8</sup> The Department’s construction of the proclamation also helps fulfill its mission by providing the maximum number of hunting opportunities available.<sup>9</sup> In sum, the Department’s decision to grant exceptions to the gratis license deadline and not to other application deadlines is within the Department’s “reasonable range of informed discretion.”<sup>10</sup>

It is my opinion that the Department may establish a June 6, 2007, application deadline to initially consider allocations of gratis deer licenses and may extend the deadline to fill

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<sup>4</sup> 2007-2008 Governor’s deer hunting proclamation.

<sup>5</sup> Id.

<sup>6</sup> Conversation with Paul Schadewald, Director of Administrative Services, North Dakota Game & Fish Department.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> See N.D. Game and Fish Department Strategic Plan, Chapter 2, Mission Statement, <http://www.gf.nd.gov/about/pdf/chap2.pdf>.

<sup>10</sup> See generally Martin v. Stutsman County Soc. Serv., 2005 ND 117, ¶ 13, 698 N.W.2d 278.

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remaining licenses. It is my further opinion that the Department's allocation of licenses to those applying after June 6, 2007, must be nondiscriminatory, that is, on a first-come first-served basis.

Sincerely,

Wayne Stenehjem  
Attorney General

djh/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>11</sup>

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<sup>11</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).