

**OPINION**  
**74-461**

July 31, 1974           (OPINION)

Thomas F. Kelsch  
Burleigh County States Attorney  
Burleigh County Courthouse  
P.O. Box 1901  
Bismarck, North Dakota 58501

Dear Mr. Kelsch:

This is in response to your letter of July 18, 1974, wherein you request an opinion of this office relative to Section 20.1-04-12 of the North Dakota Century Code, as amended, as the same concerns the training of any breed or class of dog in the fields of North Dakota between April 1 and July 14. You submit the following in your letter of inquiry:

"A question has arisen as to the type of dog restricted from working in the fields as stated in Section 20.1-04-12, N.D.C.C., which reads as follows:

20.1-04-12. When bird dogs not to be trained or permitted to run loose - Retrievers (sic) may be used. No person, between April first and July fourteenth of each year, both dates inclusive, shall train or run any dog, known as a 'bird dog', including pointers, setters, or droppers, or allow any such dog to run loose on land where game birds may be found. This section shall not prohibit the use of dogs for retrieving (sic) water birds or upland game birds during the respective open season.

Two schools of thought have arisen with respect to the interpretation of this section. One believes that since there are many different breeds of dogs, and that each was bred for a specific purpose, this section was not enacted to prevent the training of all dogs in the fields or in the waters during the period between April first and July fourteenth of each year so long as such training does not include chasing and disturbing game birds. The other school of thought is that any breed of dog could, while in the fields, chase and disturb game birds and that this section should apply to all breeds of dog, and that as such, no dog can run loose in the state during the period between April first and July fourteenth.

This office requests your opinion as to the interpretation of this section, particularly regarding the following:

1. Whether or not it is legal to train any breed of dog in the (sic) fields or in the water of this state between April first and July fourteenth of each year; and
2. If it is legal to train some breeds of dog in the field or in the water during said time period, are retrievers (sic) one of the breeds of dogs that can be trained during this time period."

You have noted and quoted the text of said Section 20.1-04-12 and request our interpretation and opinion of same.

With regard to your first question whether it is legal to train any breed of dog in the fields or in the water of this state between April first and July fourteenth of each year, we would note initially that the statute specifically limits its application to " \* \* \* any dog, known as a 'bird dog', including pointers, setters or droppers, \* \* \* ". (emphasis supplied) To the extent that the statute specifically limits itself and addresses itself to a particular class or breed of dog, it would appear that the rules of interpretation compel the conclusion that the specific provision rules over the general and that the statute would therefore have application only to those specific breeds or classes of dogs. Accordingly, we are of the opinion that the statute applies only to those class or classes of dogs known as "bird dogs", having no application to other types of dogs.

With regard to your second question, whether, if it is legal to train some breeds of dog in the field or in the water during said period, it would be legal to train retrievers during this time period. It would appear that the application of this statute would be determined by the classification of that particular breed of dog, i.e., whether a "retriever" is a bird dog. This, of course, becomes a question upon which a dog expert may be able to offer credible comment, however, as we understand that particular type of dog, it would seem that it would fall into the general classification of "bird dog". It is our understanding that retrievers are primarily bred and trained for use in connection with hunting game birds. Webster's New Twentieth Century Dictionary, unabridged, second edition, defines "retriever", as pertaining to dogs, as follows:

- . A dog specially trained to go in quest of game which a sportsman has shot, or a dog that takes readily to such work; specifically, any of several breeds of dog developed for this purpose."

As such, it would appear clear to us that a "retriever" is a "bird dog" within the definition and common knowledge concerning that type of dog and the use to which it is generally given. To some extent, of course, it would appear the ultimate fact is somewhat a question of fact rather than a question of law, however, the statute specifies certain breeds of dogs specifically and generally specifies "bird dogs". We are of the opinion that a retriever is a bird dog within the classification and meaning of the statute. Accordingly, it would appear illegal to train a retriever in the field or in the water of this state during the specified time period in accordance with the terms, limitations and exceptions of the statute.

We trust that the foregoing observations, comments and expressions will adequately set forth our opinion upon the matters submitted for determination.

Sincerely yours,

ALLEN I. OLSON

Attorney General