

# MAINE STATE LEGISLATURE

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STATE OF MAINE.

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REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

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## OFFICE OF THE ATTORNEY GENERAL.

Waterville, Me., July 5, 1910.

*Subject:* Distinction between wild birds and game birds; transportation out of State.

*Hon. J. W. Brackett, Augusta, Maine.*

SIR:—I am in receipt of your favor of July 1st inclosing letter from Mr. A. J. Wilson of Moosehead, Maine, in which he makes inquiry as to the right to transport a pair of gulls out of this state; also whether in case of any prohibition, he could obtain consent from any official to transport the birds.

You will understand, of course, that our laws relating to fish and game, recognize a distinction between birds which might be called game birds and those which would be more properly called wild birds only. While the statute does not in terms make this distinction or attempt the definition of game birds, yet it is generally understood that there are certain species of birds and animals which inhabit various portions of the world which are, by common custom, designated as game. This designation does not include all *ferae naturae* but only those which are good for food or else by their presence are dangerous to man or to domestic animals. It will be necessary then to determine whether the gull is a game bird or otherwise. Here our statute has assisted us in the interpretation so far as our State is concerned. R. S. Chap. 32, Sec. 8 as amended by Sec. 12, Chap. 132 P. L. 1905, and Sec. 5, Chap. 90 P. L. 1909 provides:

"No person shall, within the State, kill or catch or have in his or her possession, living or dead, any *wild* bird, *other* than a *game* bird, nor purchase, offer or expose for sale, any such wild bird after it has been killed or caught. No part of the plumage, skin or body of any bird protected by this section shall be sold or had in possession for sale. \* \* \* \* \*; and for the purposes of this act, the following only shall be considered game birds; the anatidæ, commonly known as swans, geese, brant, and river and sea ducks, the rallidæ, commonly known as rails, coots, and gallinules; the limicolæ, commonly known as shore birds, plovers, surf birds, snipe, woodcock; sandpipers, tattlers and curlews; the gallinæ, commonly known as wild turkeys, grouse, prairie chickens, pheasants, partridges and quails."

From this you will see that the game birds, according to our statute, are only those which are found within the groups

known as anatidae, rallidae, limicolae and the gallinae. The gull (more poetically known in old English as the mew) belongs to the genus *larus* and does not fall within any of the classes which our statutes have declared to be game birds. It follows, therefore, that the gull or mew would be considered under our law as a wild bird and not a game bird. The provisions of the statute which I have just quoted are plain and imperative that no person within this state shall kill, catch or have in possession, living or dead, any wild bird which does not fall within the list of game birds, and it therefore follows that as the gull does not fall within the list of game birds, no person can lawfully kill, catch or have in possession any gull or mew, whether living or dead. Furthermore, our statute does not authorize any official to give right or authority to anyone to have in possession these wild birds except as provided in R. S. Chap. 32, Sec. 40. Here care should be observed also to distinguish between game birds and wild birds. The early part of Sec. 40, allows the Commissioners of Inland Fisheries and Game, for certain purposes, to take fish and *game* of any kind, when, where and in such manner as they choose and authorize written permits to other persons to take fish and *game* for the *same* purposes. This, however, is not broad enough to cover wild birds. Later in the section, there is a provision in the following language:

"The Commissioners of Inland Fisheries and Game may grant permit to take moose, caribou, deer, and *birds* for park purposes *in the state* under such rules, regulations and conditions as they shall establish."

The broad and unqualified use of the word "birds" would undoubtedly allow the Commissioners of Inland Fisheries and Game to take wild birds for park purposes in this State but that would not allow them to be taken for any other purposes or even for park purposes outside of the state.

Summarizing therefore, it is my opinion that the gulls, being wild birds, could not be taken by any private citizen to have in possession in this State or for transportation out of it.

Respectfully yours,

WARREN C. PHILBROOK,  
*Attorney General.*