

2001

Joseph Bradbury v. State of Utah, Division of Wildlife Resources : Brief of Appellant

Utah Court of Appeals

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Robert C. Fillerup; attorney for appellant.

Martin B. Bushman; assistant attorney general; attorney for appellee.

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IN THE UTAH COURT OF APPEALS

Joseph Bradbury

:

Appellant,

:

Case No. 20010839-CA

vs.

:

**State of Utah, Division of Wildlife
Resources,**

:

Priority No. 14.

Appellee.

:

BRIEF OF APPELLANT

Appeal from a final Order of the Division of Wildlife Resources.

Martin B. Bushman
Assistant Attorney General
1594 West North Temple, #300
Salt Lake City, UT 84116
(801) 538-7227
Attorney for Appellee

Robert C. Fillerup (#1070)
1107 S. Orem Blvd.
Orem, UT 84058
(801) 226-0992
Attorney for Appellant

FILED
Utah Court of Appeals

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Paula L. L. L.

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1107 S. Orem Blvd.
Orem, UT 84058
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Attorney for Appellant

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction pursuant to Utah Code Ann. §63-46b-16(1), Utah Code Ann. §78-2a-3(2)(a), and R657-2-23.

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

Issues for Review.

There are four main questions to be resolved in this appeal:

(1) Did the Division of Wildlife Resources (Division) improperly interpret Utah Code Ann. §23-13-36(a)?

(2) Did the Utah Wildlife Board (Board) at the hearing on appeal improperly go beyond the scope of the original hearing in violation of Utah Code Ann. §63-46b-12 and §63-46b-16(4)(e)?

(3) Was the revocation of Bradbury's hunting license improperly based on a guilty plea to a defective Information?

(4) Did the Board improperly interpret and apply the terms "flagrantly" and "knowingly" as used in Utah Code Ann. §23-19-9?

Standards of Review.

Administrative decisions based on formal administrative proceedings are reviewed under Utah Code Ann. §63-46b-16. Statutory interpretations by agencies are reviewed under a correction-of-error standard, giving no deference to the agency's interpretation, unless the statute grants to the agency the discretion to interpret the statute. *WWC*

Holding Co. v. Public Service Comm., 2002 Ut 23, ¶8, 442 Utah Adv. Rep. 8, 10;
Florence v. Dept. of Workforce Services, 2001 Ut App 323, ¶6, 35 P.3d 1148, 1149 . The
appellate court may grant relief from an agency action if the agency has erroneously
interpreted the law. Utah Code Ann. §63-46b-16(4)(d).

When an agency's ruling is based in part on law and in part on fact, the agency
must necessarily exercise a degree of discretion, and the appellate court defers to the
agency's determination. The agency's ruling will not be upset unless it is unreasonable or
arbitrary. *Chicago Bridge & Iron Co. v. State Tax Comm'n*, 839 P.2d 303, 306 (Utah
1992). When challenging factual findings, the appellant has the burden of marshaling all
of the evidence supporting the findings and then, despite the supporting facts, showing
that the findings are not supported by substantial evidence. *WWC Holding Co., supra*, ¶8,
at 10. Utah Code Ann. §63-46b-16(4)(g) permits granting relief to an appellant who has
been substantially prejudiced if the agency action is based upon a determination of fact,
made or implied by the agency, that is not supported by substantial evidence when
viewed in light of the whole record before the court. *See also Westside Dixon Associates*
v. Utah Power & Light, 2002 Ut 31, ¶8, 443 Utah Adv. Rep. 37, 38.

DETERMINATIVE STATUTES AND RULES¹

Utah Code Annotated §23-13-2(12)(a) (Set forth in full in the Addendum)

Utah Code Annotated §23-13-2(36)(a) & (e) (Set forth in full in the Addendum)

Utah Code Annotated §23-19-5 (Set forth in full in the Addendum)

Utah Code Annotated §23-19-9 (Set forth in full in the Addendum)

Utah Code Annotated §23-20-4 (Set forth in full in the Addendum)

Utah Code Annotated §76-2-103 (Set forth in full in the Addendum)

Utah Administrative Rule R657-2-21 (Set forth in full in the Addendum)

Utah Administrative Rule R657-5-2(n) (Set forth in full in the Addendum)

Utah Administrative Rule R657-26-2(2):

R657-26-2 Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) “Flagrantly” means an act in violation of Title 23, Wildlife Resources Code committed in a manner that, in the opinion of the presiding officer, is conspicuously bad or offensive.

(b) “Knowingly” means, with respect to the nature or result of a person’s conduct, that the person was aware, or should have been aware, that the conduct was reasonably certain to cause the result.

Utah Administrative Rule R657-26-5 (Set forth in full in the Addendum)

Utah Administrative Rule R657-26-8 (Set forth in full in the Addendum)

¹ All citations to statutes and rules cited are to the versions as they existed in 1999.

STATEMENT OF THE CASE

Nature of the Case.

This is an appeal of an Order of the Utah Wildlife Board revoking the Utah big game hunting privileges of Joseph J. Bradbury for five years.

Course of the Proceedings.

On June 29, 2000, the Division issued to Bradbury a “Notice of Agency Action.” A hearing on the Notice was held on November 29, 2000, Ms. Debbie Sundell, an employee of the Division, presided as the hearing officer. A “Decision and Order” was entered by the hearing officer on January 2, 2001. The Decision and Order revoked Bradbury’s big game hunting privileges for five years.

An appeal of the Decision and Order was filed by Bradbury on January 30, 2001. The Board held a formal administrative hearing on May 17, 2001. On September 26, 2001, the Board issued an Order affirming the suspension of Bradbury’s hunting privileges for five years.

An appeal of the Order of the Board was filed in the Utah Court of Appeals on October 24, 2001.

Statement of the Facts.

a. From 1993 to 1998 Bradbury obtained Idaho resident hunting licenses using the Idaho address of the Almost Home Day Care Center, owned by his sister. (T.22-23).

b. In 1997, Bradbury applied for and obtained a Utah nonresident limited entry

Book Cliffs Elk Permit. (T.23).

c. On the application for the Utah nonresident permit, Bradbury gave the address and phone number for the Almost Home Day Care Center in Idaho. (T.23, 67, 85).

d. At the time Bradbury applied for the nonresident permit, he was domiciled in Utah as that term is defined in Utah Code Ann. §23-13-2(12)(a) and used in Utah Code Ann. §23-13-36(a)(i). (R.00012).

e. At the time Bradbury applied for the nonresident permit, he claimed residency in Utah for all purposes other than for hunting privileges. (T.70).

f. At the time Bradbury applied for the nonresident permit, he claimed residency in Idaho for hunting purposes. (T.85).

g. On September 29, 1997, Bradbury shot a six-point bull elk in the limited entry Book Cliffs area. (T.26, R.00077).

h. On April 8, 1999, Officer Jack Topham completed a “Utah Division of Wildlife Resources Investigative Report” regarding the incident. (R. 00075-79).

i. On October 1, 1999, a criminal Information was filed against Bradbury in the Eighth Judicial District Court, Uintah County, Utah. (R. 00033-34).

j. On December 15, 1999, Bradbury pled guilty to Count I of the Information charging him with a violation of Utah Code Annotated §23-20-4, “wanton destruction of wildlife,” a Class A Misdemeanor. Count 2 of the Information charging “Fraudulently Obtaining License, Permit, Tag or Certificate in violation of 23-19-5, was dismissed.

(R.00035-36).

k. The date of the offense set forth in the Information (March 29, 1999) was incorrect. (T.48-49).

l. On September 23, 1999, Bradbury plead guilty in the Seventh District Court, Bonneville County, Idaho, to three counts of purchasing the wrong class of hunting license or tag. (R.00098).

SUMMARY OF ARGUMENT

Appellant Bradbury claims that the Division improperly interpreted Utah Code Ann. §23-13-36(2)(a) in finding that he was a resident of Utah *for hunting purposes*. He also claims that the Board at the hearing on appeal improperly went beyond the scope of the original hearing in violation of Utah Code Ann. §63-46b-12 and §63-46b-16(4)(e). Bradbury further claims that his hunting license revocation was improperly based on a guilty plea to an admittedly defective Information. Finally, Bradbury claims that the Board improperly interpreted and applied the terms “flagrantly” and “knowingly.”

Point I. Bradbury was a non-resident of Utah for hunting purposes.

Issue:

Did Mr. Bradbury qualify as a non-resident of Utah under Utah Code Ann. §23-13-2(36)(a) so as to entitle him to purchase a non-resident Utah hunting license?

Rules of construction:

In construing a statute, the fundamental starting point is the language of the statute

itself. *State v. Gonzales*, 2000 Ut App 136, ¶14, 2 P.3d 954, 958. When interpreting a legislative enactment, the court's primary role is to give effect to the legislature's intent as set forth in the statute's plain language. *State ex rel. Office of Recovery Services v. McCoy*, 2000 Ut 39, ¶9, 999 P.2d 572, 547. The legislature is presumed to know the meaning of words, and to have used the words of a statute advisedly, and to have given effect to each term according to its ordinary and accepted meaning. *Alpine School District v. State Tax Commission*, 2000 Ut App 319, ¶12, 14 P.3d 125, 129. Where the language of a statute is unambiguous, the Court does not look beyond the language's plain meaning to divine legislative intent. *Adkins v. Uncle Bart's Inc.*, 2000 Ut 14, ¶24, 1 P.3d 528, 533. The best evidence of the true intent and purpose of the Legislature in enacting an Act is the plain language of the Act. *Sorensen's Ranch School v. Oram*, 2001 Ut App 354, ¶1, 36 P.3d 528, 531.

That the parties disagree about the meaning of a statute does not make the statute ambiguous; the statute is ambiguous only if it can be understood by reasonably well-informed persons to have different meanings. *Provo City v. Cannon*, 1999 Ut App 344, ¶6, 994 P.2d 206, 208; *State v. Beason*, 2000 Ut App 109, ¶19, 2 P.3d 459, 463.

Generally, the expression of one thing is the exclusion of another (*expressio unius est exclusion alterius*). *Black's Law Dictionary* 581 (6th Ed. 1990); *Biddle v. Washington Terrace City*, 993 P.2d 875, 879 (Utah 1999). As stated in *Monson v. Carver*, 928 P.2d 1017, 1025 (Utah 1996), "... in the natural association of ideas the contrast between a

specific subject matter which is expressed and one which is not mentioned leads to an inference that the latter was not intended to be included within the statute.” Stated differently, where the legislature has specifically used a term in a certain place within a statute and excluded it in another place, the courts will not read that term into the excluded section. *Banks v. Arizona State Bd. of Pardons*, 129 Ariz. 199, 629 P.2d 1035 (Ariz.App. 1981). “It is not within the province of a court in the course of construction of a statute, to make or supervise legislation.” 73 AmJur 2d 394, *Statutes*, §197. “A statute may not, under the guise of interpretation, be modified, revised, amended, distorted, remodeled, or rewritten, or given a construction of which its words are not susceptible, or which is repugnant to its terms. *Id.*

Applicable law:

This case turns almost entirely on the proper interpretation of U.C.A. §23-13-2(36)(a), which provides:

- (36)(a) “Resident” means a person who:
- (i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and
 - (ii) does not claim residency for hunting, fishing or trapping in any other state or country.

The definition of resident in Administrative Rule R657-5-2(n)(i) is nearly identical:

- “Resident” for purposes of this rule means a person who:
- (A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

The term “domicile” is defined in Utah Code. Ann. §23-13-2(12)(a) as follows:

“Domicile” means the place:

- (i) where an individual has a fixed permanent home and principal establishment;
- (ii) to which the individual if absent, intends to return; and
- (iii) in which the individual and the individual’s family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

The term “domicile” is not defined in the Administrative Rules.

Application of law to facts:

Under the plain language of Utah Code Ann. §23-13-2(36), Bradbury was a non-resident of Utah for hunting purposes. He was domiciled in Utah during the period in question, thus satisfying the requirement in subsection (i). It is undisputed that at the same time he did indeed *claim* residency in Idaho for hunting purposes. Therefore, he did not fall under the definition of “resident” as plainly set forth in subsection 36(a). Because Bradbury was not a “resident” of Utah *for hunting purposes*, he was entitled to purchase a non-resident big-game license. (Interestingly, if Mr. Bradbury had purchased a Utah resident license, having already obtained an Idaho resident license, the Utah license would have been invalid under §23-13-3(36)(e)).

The final Order makes much of the fact that Mr. Bradbury was convicted in Idaho of unlawfully purchasing resident hunting licenses, (R. 00003, 00005, 00006), and that

Mr. Bradbury's claim of Idaho residency "was a misrepresentation." (R.00005).

However, nothing in the Utah Statute *mandates* that one must actually be successful in claiming residency in another state. The fact that Mr. Bradbury may have run afoul of the stricter definition of "resident" in Idaho is of no consequence. (See R.00108 for the equivalent Idaho statute). If anything, the Idaho conviction is the *proof* that Mr. Bradbury claimed residency in another state for hunting purposes.²

The Board made much of the fact that because Bradbury actually lived in Utah and claimed Utah residency for business, tax and voting purposes, he was indeed a resident of Utah. (R.00002). However, under §23-13-2(12)(a), these would be criteria for determining "domicile," not residency. The Division consistently intermixes and confuses the two terms.

Next, the Board suggests that Bradbury was not a legal resident of Idaho. (R.00002). It points to the fact that he pled guilty to a charge in Idaho of illegally purchasing an Idaho big game license. However, §23-13-2(36) does not *mandate* that a person be a resident of another state, only that he *claim* residency in another state. Indeed,

² From the inception Mr. Bradbury indicated that because he had already purchased a resident big-game license in Idaho, he knew that he was not entitled to purchase a resident tag in Utah. The investigating officer's initial report states that "[h]e said that he justified purchasing resident Idaho licenses and then paying the higher nonresident license fees in Utah, believing that he was doing nothing wrong because he was only claiming residency in one state, Idaho." (R.00077). *See also* Bradbury's initial response to the Notice of Agency Action, where he states: "I didn't feel that I could buy a resident tag in Utah if I had decided to hunt as a resident in Idaho." (R.00053). And finally, the State verified this idea with Mr. Bradbury at the hearing. (T. 85, lines 11-16).

it is undisputed that Bradbury *claimed* residency in Idaho for hunting purposes.

Additionally, nothing in §23-13-2(36) addresses whether the claim of residency in another state has to be legitimate.

The Board also found that Bradbury violated Utah Code Ann. §23-19-5, (R.00005-6), which states in part: “It is unlawful for any person to obtain or attempt to obtain a license, permit, tag ... by fraud, deceit, or misrepresentation. It is unlawful for a resident to purchase a nonresident license.” However, this position “begs the question.” If indeed Bradbury was not a resident of Utah for hunting purposes, then he did not obtain a license by fraud, deceit or misrepresentation and did not unlawfully purchase a non-resident license. Further, there was a dismissal in the Uintah County proceeding of the count that alleged this very violation. (T. 00033, 00035, 00068, 00070).

The Board found that Bradbury made a misrepresentation when signing the Utah non-resident license application by listing an Idaho address as his residence. (R.00005). The Board again disregards the fact that Bradbury was “claiming” residency in another state “for hunting purposes.”

Finally, the Board finds that “Bradbury’s acts do not circumvent the law’s intent to prevent a person from obtaining nonresident hunting privileges through misrepresentation.” (R.00005). This statement again begs the question. To be sure, §23-19-5 prohibits “residents” from purchasing non-resident hunting tags. However, one must look back to the definition of “resident” to determine who it is that could violate this

section.

No matter what argument the State makes, all roads lead back to an interpretation of §23-13-2(36). Under the plain language of that section, and pursuant to the undisputed facts in this matter, Mr. Bradbury was not a “resident,” as that term is used in any of the sections of the Wildlife Resources Code.

Conclusion:

Because the Board improperly found that Bradbury did not qualify as a non-resident for hunting purposes, it wrongfully suspended his hunting privileges. The Order of the Board should be reversed and Bradbury’s hunting privileges should be reinstated.

**Point II. The Board erred in the manner of conducting the
hearing on appeal and in the scope of its final Order.**

Issue:

Bradbury claims that the Board erred by considering matters on appeal which were not stated in the “Notice of Agency Action,” and which were not part of the hearing officer’s Order.

Rules for the conduct of hearings:

Appeals of decisions of hearing officers revoking hunting privileges is governed by Utah Code Ann. §23-19-9(12). The Board is limited to a review of “the hearing officer’s findings and conclusions and any written documentation submitted at the hearing.” §23-19-9(12)(b). The procedure governing the Board’s review is set out in

R657-26-8. That rule provides that “any review of a presiding officer's decision shall be strictly limited to the matter specified in the order.” R657-26-8(8).

Rule R657-26-8(5) states that on appeal, “the Wildlife Board shall hold a formal hearing in accordance with the provisions of Section 63-46b-6 through Section 63-46b-10.” A formal hearing was held in this case. (T.00004).

Nothing in any of the governing statutes or rules suggests that the hearing on an appeal of an order revoking a hunting license is to be conducted as a hearing or trial de novo. The cited statutes and rules, in fact, strictly limit the scope of review.

Applicable law:

To commence a license revocation, the Division is required to give “written notice of an action the division intends to take.” Utah Code Ann. §23-19-9(7)(a). The written notice is given in the form of a “notice of agency action.” R657-26-3(1)(a). This is the document that “guides the content of these proceedings.” (T.00081, L.25.)

Application of law to facts:

Paragraph 2 of the Notice of Agency Action alleged Bradbury’s guilty plea and conviction in the Uintah County Justice Court of violating Utah Code Ann. §23-20-4, and that he “knowingly and flagrantly committed the acts that resulted in the aforementioned conviction.” Paragraph 3 of the “Notice of Agency Action” specifically stated that the “purpose of this proceeding is to determine whether the facts underlying the criminal conviction were committed knowingly and flagrantly.”(T.00055).

After conducting a hearing, the hearing officer issued a “Decision and Order.” (T.00018). The Decision and Order made limited findings of fact. (T. 00018). Based upon those “findings,” certain conclusions of law were entered. The ultimate result was that Mr. Bradbury’s big-game hunting privileges were suspended for five years. (T.00020).

Bradbury timely appealed the decision and order. (T. 00011). The basis of the appeal was that the decision and order failed to address the issue of the definition of “resident,” failed to address the factual problem in the Information, that the conclusion that Bradbury committed a flagrant violation was unsupported by the findings of fact, that the order misapplied and misinterpreted certain Utah Code sections, and that the definition of “knowingly” as used in the Administrative Rules, exceeded the scope of authority and was an abuse of discretion of the agency. (R. 00011-00013).

At the hearing before the Board, the chairman, in his opening comments, properly stated the limited scope of the hearing. (T. 4-5.) However, during the hearing, the Division sought to introduce evidence of matters other than those concerning the guilty plea in the Eighth District Court in Utah. Specifically, the Division sought to introduce evidence about a conviction in Idaho. (T.33, 83). An objection was lodged (T. 34-35, 84) and overruled (T. 36, 84). The State sought to introduce evidence about what Bradbury may have represented in Idaho when he applied for an Idaho driver’s license. (T. 70-78). An objection was lodged (T.78) and was overruled (T.80).

The Board also erred by considering the information on the application that Mr. Bradbury submitted in Utah to obtain the non-resident tag. (R. 00002, ¶¶6-7; R.00006, ¶(b)(1)). Neither the Notice of Agency Action (R.00055), nor the hearing officer's Decision and Order (R. 00018) addressed this application. Because the Notice of Agency Action limited its scope to "the facts underlying the criminal conviction," (R.00055), the facts underlying Count 2 of the Information filed in Uintah County, which was dismissed, (R. 00033-36, 00068, 00096), became irrelevant. Indeed, Utah Code Ann. §23-19-9(5)(a)(ii) proscribes revocation if "the charges were dismissed."

Conclusion:

Based to a large degree upon the improperly admitted information, the Board found that "Mr. Bradbury was a resident of Utah for the purposes of obtaining a license for hunting, fishing, and trapping." (R. 00005). The Board failed to confine itself to a review of the initial hearing officer's findings of fact and conclusions of law. It is impossible to eradicate the offending portions of the Board's Order. Consequently, the Order should be reversed and the Board should be ordered to reinstate Mr. Bradbury's big-game hunting privileges.

**Point III. The Board improperly found Bradbury's conduct
to be "flagrant" and "knowing."**

Issue:

Bradbury claims that there is no, or insufficient, evidence in the record to support

the finding that he “flagrantly” and “knowingly” violated the wildlife code.

Applicable law:

An appellate court may grant relief if “the agency action is based upon a determination of fact, made or implied by the agency, that it not supported by substantial evidence when viewed in light of the whole record before the court.” Utah Code. Ann. §63-46b-16(4)(g).

Substantial evidence is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. This standard does not require or specify a quantity of evidence as a reasonable mind might accept as adequate to support a conclusion. Nonetheless, in evaluating the sufficiency of the evidence, we will not sustain a decision which ignores uncontradicted, competent, credible evidence to the contrary.

WWC Holding Co. v. Public Service Comm., 2002 Ut 23, ¶8, 442 Utah Adv. Rep. 8, 9, quoting *Harken Southwest Corp. v. Bd. of Oil, Gas and Mining*, 920 P.2d 1176, 1180 (Utah 1996). “When challenging factual findings, the appellant has the burden of ‘marshaling all of the evidence supporting the findings and then, despite the supporting facts, showing that the findings are not supported by substantial evidence.” *Id.*

Before a hunting license can be revoked, the hearing officer must determine that a person “flagrantly” *and* “knowingly” violated or countenanced the violation of Title 23 of the Utah Code, or of any rule, proclamation or order of the Wildlife Board. Utah Code Ann. §23-19-9(1).

Interestingly, Utah Code Ann. §23-19-9 does not permit a revocation of a hunting

license based solely upon a criminal conviction. Subsection (1)(a) requires an independent finding by a hearing officer that such a violation was flagrant and knowing.

The term “flagrantly” is not defined in the Utah Code. It is defined in Rule R657-26-2(2)(a) as follows: “‘Flagrantly’ means an act in violation of Title 23, Wildlife Resources Code committed in a manner that, in the opinion of the presiding officer, is conspicuously bad or offensive.”

The term “knowingly” is not defined in Wildlife Resources Code. However, the section dealing with wanton destruction of protected wildlife, §23-20-4(1)(c)(i), refers to §76-2-103 of the Utah Criminal Code for definitions of the terms “intentional, knowing, or reckless conduct.” (Section 23-20-4 was the basis of the guilty plea of Mr. Bradbury in Uintah County.)

§76-2-103. Definitions.

A person engages in conduct

(1) Intentionally

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

The Administrative Rules, however, give a different definition of “knowingly.”

R657-26-2. Definitions.

...

(2)(b) “Knowingly” means, with respect to the nature or the result of a person’s conduct, that the person was aware, *or should have been aware*, that the conduct was reasonably certain to cause the result. (emphasis added).

The definition in the Rule mixes the definitions in the Criminal Code of “knowingly,” found in §76-2-103 with the definition of “criminal negligence” also found in §76-2-103, which states:

76-2-103. Definitions.

A person engages in conduct

.....

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he *ought to be aware* of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor’s standpoint. (emphasis added).

Application of law to facts:

Bradbury claimed at both the initial hearing (R.000117) and on appeal (R.00013, R.00041) that the rule defining “knowingly” was problematic. In the “Appeal,” Bradbury argued that the definition of “knowingly” contained in Rule R657-26-2(a) was “patently defective, conflicts with Utah Code §76-2-103, and is invalid. Defining ‘knowingly’ to include principles of criminal negligence exceeds the scope of authority, and is an abuse of discretion of the agency.” (R.00013). The notice of Appeal went on to observe that “[t]hese issues were all raised and argued at the hearing. Again, the Decision and Order simply ignores them.”

Bradbury now adds that although these issues were raised on appeal, the final Order “simply ignores them.” Bradbury submits that the only proper definition of

“knowingly” is the one found in the Criminal Code, and the one found in the Rule should be rejected.

In its Order, the basis for the Board finding that the violation occurred “knowingly” was that Bradbury “knew he was a resident of Utah in 1996 and 1997, but he applied for and obtained a nonresident hunting license and permit.” (R.00006). The Board found that the violation occurred “flagrantly, or in a conspicuously bad or offensive manner” because Bradbury misrepresented his residence on the 1997 application, he was prosecuted and convicted in Idaho indicating that he was not a resident of Idaho, and the Bradbury was convicted in Utah of wanton destruction of protected wildlife.” (R.00006). These statements, of course, beg the question of the definition of “resident.” In the Order, the Board falls again into the trap of using the criteria for determining “domicile” to determine that he “knew” that he was a resident of Utah *for hunting purposes*. More particularly, there is insufficient evidence in the record that Mr. Bradbury “knew” that he was doing something wrong when he applied for the nonresident permit, let alone that his conduct was “flagrant.” Utah Code Ann. §23-19-9(1) requires a finding that the alleged conduct be both flagrant *and* knowing.

Bradbury now marshals the evidence:

Evidence supporting finding that Bradbury committed the violation “knowingly.”

a. Bradbury affirmed on cross-examination at the hearing on appeal that he resided in Utah during the period in question. (T.67-70).

b. Bradbury listed an Idaho address and telephone number on his Utah non-resident application. (T. 67-70, 85).

Evidence contradicting the finding that the violation was committed “knowingly.”

Bradbury has consistently maintained throughout this entire episode, that he never thought he was doing anything wrong. When he first talked to the investigating officer, Bradbury “justified purchasing resident Idaho licenses and then paying the higher nonresident license fees in Utah, believing that he was doing nothing wrong because he was only claiming residency in one state, Idaho.” (R.00077). In his own response to the Notice of Agency Action, Mr. Bradbury stated: (R.00052-53).

Because I had chosen Idaho as the state that I wanted to hunt as a resident, I didn’t feel it was right to try to take that privilege in Utah as well. Because of this, I purchased out of state tags for Utah, even though it was many times more expensive than the resident tags.

...

I had no idea that I could be in trouble with Utah for paying the much higher out-of-state fees for hunting. I felt that I had done the honorable thing by paying the expensive non-resident prices. Never once did I feel that I was hurting the State of Utah or getting unfair advantage. I had no idea that it would increase or decrease my opportunity.

During the cross-examination of Bradbury by the Division at the hearing on appeal the following exchange occurred: (T. 00085).

Q. [Mr. Bushman] Now you've testified, Mr. Bradbury, that on the 1997 application with the Utah Division of Wildlife Resources, that you gave an Idaho address, Idaho phone number, Idaho driver's license number, correct?

A. [Mr. Bradbury] Correct.

Q. But yet you believed that you were legitimately a non-resident by virtue of the fact you were claiming residency in Idaho; is that correct?

A. Like -- like if I chose to be a resident in one state, that I needed to be a non-resident in every other state that I applied for.

Q. Was that based on the law or was that just your personal feeling?

A. I (inaudible).

MR. FILLERUP: Well, I'll object. He's asking my client for a legal conclusion.

MR. BUSHMAN: No I'm not; I'm asking if it was his opinion, if it was a personal feeling or whether he had somewhere read it in the law.

A. I did not read it in the law so I (inaudible) --

MR. BUSHMAN: A personal --

Conclusion:

The Division failed to introduce any evidence about Bradbury's mental state when he filed the application for non-resident hunting privileges in Utah. There was no evidence that he ever manifested any intent to deceive or to do something illegal. The Board's conclusions that the violation occurred "knowingly" and "flagrantly" are simply unsupported by any evidence of intent.

Point IV. Can a guilty plea to an Information which is admittedly defective form the basis for a license revocation?

Issue:

Although Bradbury pled guilty to Count 1 of the Information, it was later determined that the Information contained an incorrect date for the alleged offense. Because the Division admits the Information is defective, can it never-the-less use it as a basis for a license revocation proceeding?

Applicable law:

Appellant has been unable to find any law that bears directly on the issue.

Argument:

The initial “Notice of Agency Action” instituted revocation proceedings based upon Bradbury’s guilty plea in the Uintah County Justice Court. The Notice stated that the purpose of the proceeding was to “determine whether the facts underlying the criminal conviction were committed knowingly and flagrantly.” (R.00055). It is undisputed that the Information to which Mr. Bradbury pled guilty was defective. It contained an improper date for the alleged offense. The investigating officer admitted that it was his mistake in submitting the date of the offense, and that no crime was committed by Mr. Bradbury on the date contained in the Information. (T. 48-49).

The issue of the defective Information was raised prior to, and at the initial hearing. (R.00039). The issue was ignored in the “Decision and Order.” (R.00018-21). Particular mention of this issue was made in the Notice of Appeal. (R.00012, ¶2). The Appeal in part focused on this problem, and the fact that it was totally ignored in the Decision. (R.00012). The issue was raised, addressed, and argued at the hearing on appeal. (T. 14-15, 48-49, 54-55, 99.) Again, the final Order totally ignores the issue.

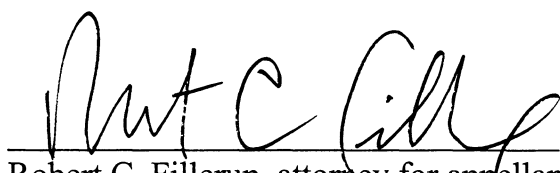
Because the stated purpose of the initial “Notice of Agency Action” was to “determine whether the facts underlying the criminal conviction were committed knowingly and flagrantly,” (R.00055), and because the “facts” underlying the conviction are admittedly defective, the Division erred in commencing revocation proceedings. In

addition, the Division erred in consistently ignoring or even addressing the defense as raised. The Order of revocation should be reversed and Mr. Bradbury's hunting privileges reinstated.

CONCLUSION

The Division improperly interpreted and applied the definition of "resident" in the Wildlife Resources Code. This error led to a host of problems for Mr. Bradbury, including the suspension of his big-game hunting privileges in Utah for five years. This error was perpetuated in the initial Order and in the Order of the Wildlife Board. Because of this error, and the other errors argued herein, Mr. Bradbury is entitled to have his hunting privileges fully restored in Utah, and to have the Division take all related corrective action that is necessary to fulfill such a mandate.

Respectfully submitted this 22 day of April, 2002.

A handwritten signature in black ink, appearing to read "Robert C. Fillerup", written over a horizontal line.

Robert C. Fillerup, attorney for appellant Joseph Bradbury.

CERTIFICATE OF SERVICE

I certify that on the 22nd day of April, 2002, I mailed two copies of the foregoing

Brief by first class mail to:

Martin B. Bushman
Assistant Attorney General
1594 West North Temple, #300
Salt Lake City, UT 84116



Robert C. Fillerup

ADDENDUM

23-13-2 Definitions. (1999)

As used in this title:

...

(12) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

...

(36) (a) "Resident" means a person who:

(i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

23-19-5 Fraud, deceit, or misrepresentation in obtaining a license, permit, tag, or certificate of registration unlawful - Violation - Penalty. (1999)

It is unlawful for any person to obtain or attempt to obtain a license, permit, tag, or certificate of registration by fraud, deceit, or misrepresentation. It is unlawful for a nonresident to purchase a resident license. It is unlawful for a resident to purchase a nonresident license. Any person violating provisions of this section is guilty of a class B misdemeanor.

23-19-9 Revocation of license - Grounds - Notice - Restriction on obtaining new license. (1999)

(1) A license, permit, tag, or certificate of registration shall be revoked by a hearing officer appointed by the division director:

(a) if the hearing officer determines that a person flagrantly and knowingly:

(i) violates or countenances the violation of:

(A) this title; or

(B) any rule, proclamation, or order of the Wildlife Board; or

(ii) while engaged in an activity regulated under this title:

(A) kills or injures domestic livestock; or

(B) violates Section 76-10-508 ; or

(b) upon receiving notice from another state's wildlife agency that a person has:

(i) failed to comply with the terms of a wildlife citation; or

(ii) been convicted of a violation that would warrant an action taken under Subsection (1)(a).

(2) A hearing officer may revoke or suspend the certificate of registration of a person who fails to comply with the terms of a certificate of registration.

(3) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3 , shall be revoked by a hearing officer appointed by the division if the hearing officer determines the holder of the certificates of registration has violated Section 59-23-5 .

(4) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section. The director may not appoint a division employee who investigates or enforces wildlife violations.

(5) (a) A hearing officer may not revoke a person's license, permit, tag, or certificate of registration if:

(i) the person was not charged with a violation in Subsection (1) or (3);

(ii) the charges were dismissed; or

(iii) the person was found not guilty of the violation in a court of law.

(b) For purposes of this section, the following shall not be construed as a finding of not guilty:

(i) a plea of guilty;

(ii) a plea of no contest; or

(iii) the entry of a plea in abeyance.

(6) The hearing officer shall consider any recommendation made by a sentencing court concerning revocation before issuing a revocation order.

(7) Prior to revocation, a person must be:

(a) given written notice of an action the division intends to take; and

(b) provided with an opportunity for a hearing.

(8) A hearing officer may prohibit the person from obtaining a new license, permit, tag, or certificate of registration of the same type for a period of up to five years.

(9) (a) A person may not obtain a new license, permit, tag, or certificate of registration of the same type while under an order of revocation.

(b) A violation of Subsection (9)(a) is a class B misdemeanor and a hearing officer shall prohibit the person from obtaining a license, permit, tag, or certificate of registration of the same type for up to an additional five years.

(10) A hearing officer may construe any subsequent conviction which occurs within the revocation period as a flagrant violation and may prohibit the person from obtaining a new license, permit, tag, or certificate of registration for up to an additional five years.

(11) A hearing officer may reinstate a license, permit, tag, or certificate of registration revoked under Subsection (1)(b)(i) upon receiving a report that the person has complied with the citation.

(12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing. The Wildlife Board may:

- (i) take no action;
- (ii) vacate or remand the decision; or
- (iii) amend the period of revocation.

(13) The Wildlife Board may make rules to implement this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

23-19-9 Revocation of license - Grounds - Notice - Restriction on obtaining new license. (1999)

(1) A license, permit, tag, or certificate of registration shall be revoked by a hearing officer appointed by the division director:

(a) if the hearing officer determines that a person flagrantly and knowingly:

(i) violates or countenances the violation of:

(A) this title; or

(B) any rule, proclamation, or order of the Wildlife Board; or

(ii) while engaged in an activity regulated under this title:

(A) kills or injures domestic livestock; or

(B) violates Section 76-10-508 ; or

(b) upon receiving notice from another state's wildlife agency that a person has:

(i) failed to comply with the terms of a wildlife citation; or

(ii) been convicted of a violation that would warrant an action taken under Subsection (1)(a).

(2) A hearing officer may revoke or suspend the certificate of registration of a person who fails to comply with the terms of a certificate of registration.

(3) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3 , shall be revoked by a hearing officer appointed by the division if the hearing officer determines the holder of the certificates of registration has violated

Section 59-23-5

(4) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section. The director may not appoint a division employee who investigates or enforces wildlife violations.

(5) (a) A hearing officer may not revoke a person's license, permit, tag, or certificate of registration if:

(i) the person was not charged with a violation in Subsection (1) or (3);

(ii) the charges were dismissed; or

(iii) the person was found not guilty of the violation in a court of law.

(b) For purposes of this section, the following shall not be construed as a finding of not guilty:

(i) a plea of guilty;

(ii) a plea of no contest; or

(iii) the entry of a plea in abeyance.

(6) The hearing officer shall consider any recommendation made by a sentencing court concerning revocation before issuing a revocation order.

(7) Prior to revocation, a person must be:

(a) given written notice of an action the division intends to take; and

(b) provided with an opportunity for a hearing.

(8) A hearing officer may prohibit the person from obtaining a new license, permit, tag, or certificate of registration of the same type for a period of up to five years.

(a) A person may not obtain a new license, permit, tag, or certificate of registration of the same type while under an order of revocation.

(b) A violation of Subsection (9)(a) is a class B misdemeanor and a hearing officer shall prohibit the person from obtaining a license, permit, tag, or certificate of registration of the same type for up to an additional five years.

(10) A hearing officer may construe any subsequent conviction which occurs within the revocation period as a flagrant violation and may prohibit the person from obtaining a new license, permit, tag, or certificate of registration for up to an additional five years.

(11) A hearing officer may reinstate a license, permit, tag, or certificate of registration revoked under Subsection (1)(b)(i) upon receiving a report that the person has complied with the citation.

(12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing. The Wildlife Board may:

(i) take no action;

(ii) vacate or remand the decision; or

(iii) amend the period of revocation.

(13) The Wildlife Board may make rules to implement this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

23-20-4 Wanton destruction of protected wildlife - Penalties. (1999)

(1) A person is guilty of wanton destruction of protected wildlife if he:

(a) commits an act in violation of Section 23-13-4 , 23-13-5 , 23-13-13 , 23-15-6 through 23-15-9 , 23-16-5 , or Subsection 23-20-3 (1);

(b) captures, injures, or destroys protected wildlife; and

(c) (i) does so with intentional, knowing, or reckless conduct as defined in Section 76-2-103 ;

(ii) intentionally abandons protected wildlife or a carcass;

(iii) commits the offense at night with the use of a weapon;

(iv) is under a court or division revocation of a license, tag, permit, or certificate of registration; or

(v) acts for pecuniary gain.

(2) Subsection (1) does not apply to actions taken which are in accordance with the following:

(a) Title 4, Chapter 14, Utah Pesticide Control Act;

(b) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act; or

(c) Section 23-16-3 .

(3) Wanton destruction of wildlife is punishable:

(a) as a third degree felony if:

(i) the aggregate value of the protected wildlife determined by the values in Subsection 23-20-4 (4) is more than \$500; or

(ii) a trophy animal was captured, injured, or destroyed;

(b) as a class A misdemeanor if the aggregate value of the protected wildlife, other than any trophy animal, determined by the values established in Subsection 23-20-4 (4) is more than \$250, but does not exceed \$500;

(c) as a class B misdemeanor if the aggregate value of the protected wildlife determined by the values established in Subsection 23-20-4 (4) is \$250 or less.

(4) Regardless of the restitution amounts imposed under Subsection 23-20-4.5 (2), the following values shall be assigned to protected wildlife for the purpose of determining the offense for wanton destruction of wildlife:

(a) \$1,000 per animal for:

(i) bison;

(ii) bighorn sheep;

(iii) rocky mountain goat;

(iv) moose;

(v) bear; or

(vi) endangered species;

(b) \$750 per animal for:

(i) elk; or

(ii) threatened species;

(c) \$500 per animal for:

(i) cougar;

(ii) golden eagle;

(iii) river otter; or

(iv) gila monster;

(d) \$400 per animal for:

(i) pronghorn antelope; or

(ii) deer;

(e) \$350 per animal for bobcat;

(f) \$100 per animal for:

(i) swan;

(ii) sandhill crane;

(iii) turkey;

(iv) pelican;

(v) loon;

(vi) egrets;

(vii) herons;

- (viii) raptors, except those that are threatened or endangered;
 - (ix) Utah milk snake; or
 - (x) Utah mountain king snake;
- (g) \$35 per animal for furbearers, except:
- (i) bobcat;
 - (ii) river otter; and
 - (iii) threatened or endangered species;
- (h) \$15 per animal for game birds, except:
- (i) turkey;
 - (ii) swan; and
 - (iii) sandhill crane;
- (i) \$10 per animal for game fish;
- (j) \$8 per pound dry weight of processed brine shrimp including eggs; and
- (k) \$5 per animal for protected wildlife not listed.

(5) For purposes of sentencing for a wildlife violation, a person who has been convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory sentencing requirements prescribed in Subsection 76-3-203 (4).

(6) As part of any sentence imposed, the court shall impose a sentence of incarceration of not less than 20 consecutive days for any person convicted of a third degree felony under Subsection (3)(a)(ii) who captured, injured, or destroyed a trophy animal for pecuniary gain.

(7) If a person has already been convicted of a third degree felony under Subsection (3)(a)(ii) once, each separate further offense under Subsection (3)(a)(ii) is punishable by, as part of any sentence imposed, a sentence of incarceration of not less than 20 consecutive days.

(8) The court may not sentence a person subject to Subsection (6) or (7) to less than 20 consecutive days of incarceration or suspend the imposition of the sentence unless the court finds mitigating circumstances justifying lesser punishment and makes that finding a part of the court record.

Utah Administrative Rules

R657-2-21 Agency Review. (1999)

(1)(a) When a division action is taken by a division employee, other than the director acting as the presiding officer, any aggrieved party may seek review of the order.

(b) The request for review shall be made to the director in accordance with Section 63-46b-12 (1).

(c) Except as provided in Section 63-46b-14 (2), review by the director is a prerequisite for judicial review.

(2) Requests for review of an action within the statutory or regulatory purview of the division shall:

(a) be filed with the director within 30 days after the issuance of the order; and

(b) be sent to each party.

(3) The request for review shall be reviewed by the director or the assistant director, when designated by the director.

(4)(a) Unless otherwise provided by law, all reviews shall be based on the record before the presiding officer.

(b) In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(5) Parties are not entitled to a hearing on review unless:

(a) specifically allowed by statute; or

(b) the director grants a hearing to assist the review.

(6) Notice of any hearing shall be mailed to all parties within 10 days of the hearing.

(7)(a) Within a reasonable time after the filing of any response, other filings, or after any hearing, the director shall issue a written order on review and mail a copy of the order on review to each party.

(b) The order on review shall contain the items, findings, conclusions, and notices set forth in Subsection 63-46b-12 (6)(c).

R657-5-2 Definitions. (2001)

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

...

(n)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time

student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

R657-26-5 Hearings. (2001)

(1)(a) The presiding officer shall provide the respondent with an opportunity for a hearing.

(b) A hearing shall be held if the respondent requests a hearing within 20 days after the date the notice of agency action is issued.

(2) The respondent, or a person designated by the respondent to appear on the respondent's behalf, may testify at the hearing and present any relevant information or evidence.

(3) Hearings shall be open to all parties to the proceeding.

(4) After reviewing all of the information provided by the parties, the presiding officer shall revoke the respondent's license, permit, tag, or certificate of registration if:

(a) the presiding officer determines that the respondent flagrantly and knowingly:

(i) violated or countenanced the violation of any:

(A) provision of Title 23, Wildlife Resources Code; or

(B) rule, proclamation, or order of the Wildlife Board; or

(ii) while engaged in any activity regulated under Title 23, Wildlife Resources Code:

(A) kills or injures domestic livestock; or

(B) violates Section 76-10-508 ; or

(b) upon receiving notification from another state's wildlife agency that a person has:

(i) failed to comply with the terms of a wildlife citation;

(ii) been convicted of a violation that would warrant an action taken under Subsection (a);
or

(c) the person violated Section 23-20-14.

(5) After reviewing all of the information provided by the parties, the presiding officer may revoke or suspend the certificate of registration of a person who fails to comply with the terms of a certificate of registration.

(6)(a) The presiding officer may not revoke a person's license, permit, tag, or certificate of registration if:

(i) the person was not charged with a violation in Subsection (4);

(ii) the charges were dismissed; or

(iii) the person was found not guilty of the violation in a court of law.

(b) For purposes of this section, the following shall not be construed as a finding of not guilty:

(i) a plea of guilty;

(ii) a plea of no contest; or

(iii) the entry of a plea in abeyance.

(7) The presiding officer shall consider any recommendation made by a sentencing court concerning revocation before issuing a revocation order.

R657-26-8 Wildlife Board Review - Procedure. (2001)

(1)(a) A person may file an appeal of a presiding officer's decision with the Wildlife Board.

(b) The appeal must be in writing and the respondent shall send a copy of the appeal by

mail to the chair of the Wildlife Board and each of the parties.

(2) The appeal must be filed within 30 days after the issuance of the presiding officer's decision and order.

(3) The appeal shall:

(a) be signed by the respondent or the respondent's legal counsel;

(b) state the grounds for appeal and the relief requested; and

(c) state the date upon which it was mailed.

(4)(a) Within 15 days after the mailing date of the appeal, any party may file a written response with the Wildlife Board.

(b) A copy of the response shall be sent by mail to the chair of the Wildlife Board and each of the parties.

(5) The Wildlife Board shall hold a formal hearing in accordance with the provisions of Section 63-46b-6 through Section 63-46b-10. The Wildlife Board may convert the hearing to an informal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(6) At the conclusion of the hearing, the Wildlife Board may:

(a) take no action;

(b) vacate or remand the decision; or

(c) amend the duration of revocation or suspension ordered by the presiding officer.

(7)(a) If the Wildlife Board takes any action to vacate or remand the decision or amend the duration of revocation or suspension, the chair of the Wildlife Board shall, within a reasonable time, issue a written order on review.

(b) The order on review shall be signed by the chair of the Wildlife Board and mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute permitting review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) whether the decision of the presiding officer is to be affirmed, reversed, modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vi) a notice of any right of further administrative reconsideration or judicial review; and

(vii) the time limits applicable to any appeal or review.

(8) Any review of a presiding officer's decision shall be strictly limited to the matter specified in the order.

**STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
WILDLIFE BOARD**

)	
)	
)	
Joseph J. Bradbury,)	
)	
Appellant,)	
)	ORDER
vs.)	
)	
STATE OF UTAH, DIVISION)	
OF WILDLIFE RESOURCES)	
)	Case No.
Respondent.)	

BACKGROUND

The Utah Wildlife Board held a formal administrative hearing in the above-captioned matter on May 17, 2001, at the Natural Resource Building located at 1594 West North Temple, Salt Lake City, Utah. Board members Collin Allan, Raymond Heaton, Paul Niemeyer, Curtis Dastrup, Brenda Freeman, Coni Brooks, and Chairman Max Morgan, M.D. were present. All participated in and unanimously agreed to the decision. The Board conducted the formal hearing under provisions of the Utah Administrative Procedures Act, Utah Division of Wildlife Resources ("DWR") Administrative Rules, and other applicable law.

Assistant Attorney General Martin Bushman represented DWR at the Hearing. Appellant Joseph Bradbury was represented by his attorney, Robert C. Fillerup.

DWR Officer Jack Topham testified on behalf of the Division. Appellant Joseph J. Bradbury testified on his own behalf.

After hearing from all parties, receiving full disclosure of relevant facts, reviewing submitted exhibits, and considering the evidence and relevant law, the Board hereby makes the following findings of fact and conclusions of law, offers reasons for its decisions, and issues the order below.

FINDINGS OF FACT

1. Joseph Bradbury is a resident of Utah and he is domiciled in Utah. Mr. Bradbury admitted before the Board and Judge Anderson that he is a resident of Utah. He currently resides at 4606 North 50 West, Provo, Utah, and he has lived in Utah for at least fourteen years. Mr. Bradbury claims Utah residency for business, tax and voting purposes.

2. Mr. Bradbury has never been a legal resident of Idaho.

3. In November of 1993, Joseph Bradbury traveled to Meridian, Idaho, and obtained an Idaho driver's license.

4. Mr. Bradbury obtained the Idaho driver's license using the following address: 1524 Meridian Street, Meridian, Idaho. This address is that of the Almost Home Day Care Center, owned by Mr. Bradbury's sister. Joseph Bradbury has never lived at this address.

5. From 1993 to 1998, Joseph Bradbury obtained Idaho resident hunting licenses using the Idaho address of the Almost Home Day Care Center.

6. In 1996, Joseph Bradbury applied for a nonresident hunting license in Utah. On the application, Mr. Bradbury listed 1524 Meridian Street, Meridian, Idaho, as his address and signed a statement attesting that all information contained in the application was "true and correct."

7. In 1997, Joseph Bradbury applied for and obtained a Utah nonresident limited entry Book Cliffs Elk Permit. He again listed the Meridian, Idaho address of his sister's day care center as his address and signed the application, indicating that all statements therein were "true and correct." Mr.

Bradbury could not be reached at the telephone number or address listed on this application.

9. In the fall of 1998, an anonymous caller contacted DWR Officer Jack Topham through the agency's hotline and reported that Mr. Bradbury had unlawfully obtained a Utah nonresident hunting license for the past five years.

10. On September 29, 1997, Mr. Bradbury shot a six-point bull elk ostensibly under authority of the nonresident limited entry Book Cliffs Bull Elk Permit.

11. On September 23, 1999, Mr. Bradbury was convicted in the Seventh District Court, Bonneville County, Idaho, one count of purchasing the "wrong class license" for hunting, one count of purchasing the "wrong class tag" for elk, and one count of purchasing the "wrong class tag" for bear. All three convictions stemmed from Mr. Bradbury unlawfully purchasing Idaho resident hunting licenses. As a result, Mr. Bradbury's Idaho hunting privileges were revoked for a period of two years.

12. On December 15, 1999, Mr. Bradbury pled guilty at a hearing in the Eighth District Court, Uintah County, Utah, to a violation of Utah Code Annotated § 23-20-4, "wanton destruction of wildlife," a Class A Misdemeanor. The conviction was based on Mr. Bradbury taking a six-point bull elk with an unlawfully obtained Utah nonresident limited entry Book Cliffs Bull Elk Permit in 1997. Defendant was represented at the hearing by his counsel, Joel D. Barrett.

CONCLUSIONS OF LAW and REASONS FOR DECISION

13. Utah Code Annotated § 23-19-9 requires that a wildlife license, permit, or tag be revoked if a person "flagrantly and knowingly...violates...th[e] title."

14. Utah Administrative Code R657-26-2(2)(a) defines "flagrantly" to mean "an act in violation of Title 23...committed in a manner that...is conspicuously bad or offensive."

15. Utah Administrative Code R657-26-2(2)(b) defines "knowingly" to mean "with respect to the nature or the result of a person's conduct, that the person was aware, or should have been aware, that the conduct was reasonably certain to cause the result."

16. Utah Code Annotated § 23-19-5 makes it unlawful for any person to "obtain a license, permit, tag . . . by fraud, deceit or misrepresentation . . . (i)t is unlawful for a resident to purchase a nonresident license."

17. Utah Code Annotated § 23-13-2(36) defines "resident" as "a person who: (i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and (ii) does not claim residency for hunting, fishing or trapping in any other state or country."

18. Utah Code Annotated § 23-20-4 provides that a person is guilty of "wanton destruction of protected wildlife" if he "posess[es] protected wildlife . . . unaccompanied by a valid . . . tag."

19. Utah Code Annotated § 23-13-2(34)(a) defines "protected wildlife" to include "vertebrate animals living in nature, except feral animals."

20. Based upon the testimony and exhibits presented by both parties at the hearing, and taking into account the DWR Hearing Officer's previous order relating to this case, the Board finds that Mr. Bradbury was a Utah resident for the purpose of hunting. Utah Code Annotated § 23-13-2(36) defines "resident" as "a person who: (i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and (ii) does not claim residency for hunting, fishing or trapping in any other state or country." Mr. Bradbury admits that he meets the definition's first criteria because he was domiciled in Utah for six consecutive months immediately before purchasing his license. However, he argues that he did not meet the second

criteria because he claimed residency in Idaho for hunting, fishing, or trapping purposes, and, therefore, he is not a Utah resident for hunting purposes.

In November of 1993, Joseph Bradbury traveled to Meridian, Idaho and obtained an Idaho driver's license using the address of his sister's business located in Meridian, Idaho. Although he has never lived in Idaho, Mr. Bradbury used this address to obtain resident hunting licenses and tags in Idaho and nonresident hunting licenses and tags in Utah. Mr. Bradbury has resided in Utah for at least fourteen years and he claims Utah residency for business, tax and voting purposes.

Mr. Bradbury's use of the Idaho address to obtain hunting licenses has led to misdemeanor criminal convictions in both Idaho and in Utah. On September 23, 1999, Mr. Bradbury was convicted in the Seventh District Court, Bonneville County, Idaho, one count of purchasing the "wrong class license" for hunting, one count of purchasing the "wrong class tag" for elk, and one count of purchasing the "wrong class tag" for bear. Mr. Bradbury's Idaho hunting privileges were revoked for a period of two years. On December 15, 1999, Mr. Bradbury pled guilty at a hearing in the Eighth District Court, Uintah County, Utah, to "wanton destruction of wildlife".

These facts lead the Board to conclude that Mr. Bradbury may have claimed Idaho residency for hunting, fishing or trapping but that his claim was a misrepresentation. Therefore, Mr. Bradbury in effect argues that through his misrepresentation he should maintain his hunting privileges. The Board concludes that Mr. Bradbury's acts do not circumvent the law's intent to prevent a person from obtaining nonresident hunting privileges through misrepresentation. "It is unlawful for any person to obtain or attempt to obtain a license, permit, tag . . . by fraud, deceit, or misrepresentation. It is unlawful for a resident to purchase a nonresident license." Utah Code Annotated § 23-19-5. Therefore, Mr. Bradbury was a resident of Utah for the purposes of obtaining

a license for hunting, fishing, and trapping.

21. The Board concludes that Mr. Bradbury knowingly and flagrantly violated Utah Code Ann. § 23-19-5:

(a) the Board concludes the violation occurred "knowingly" because the evidence presented to the Board demonstrates that Mr. Bradbury knew he was a resident of Utah in 1996 and 1997, but he applied for and obtained a nonresident hunting license and permit. Joseph Bradbury is domiciled in Utah. He currently resides at 4606 North 50 West, Provo, Utah, and he has lived in Utah for at least fourteen years. Mr. Bradbury claims Utah residency for business, tax and voting purposes and he has never lived in Idaho.

(b) the Board determines the violation occurred "flagrantly," or in a conspicuously bad or offensive manner, because:

(1) Mr. Bradbury misrepresented his residence by listing the Idaho address of the Almost Home Day Care Center as his address on his 1997 application for a nonresident limited entry Book Cliffs Elk Permit. Mr. Bradbury has never lived in Idaho. Mr. Bradbury signed a statement on the application indicating that this information was "true and correct," when he knew in fact that it was a misrepresentation.

(2) Mr. Bradbury was prosecuted and convicted in an Idaho court for purchasing an Idaho resident hunting license and tags, indicating that he obtained the license and tags in an unlawful manner and that he was not a resident of Idaho;

(3) Mr. Bradbury was prosecuted and convicted in Utah of wanton

destruction of protected wildlife for harvesting a six-point trophy bull elk without a valid permit.

20. The remedy prescribed below by the Board is appropriate because:

- (a) DWR carefully manages the taking of trophy animals, such as six-point bull elk;
- (b) illegal taking of such trophy animals diminishes an already small population;
- (c) a six-point bull elk cannot be replaced in one or two years;
- (d) hunting is a privilege granted by the State to those willing to obey applicable rules and follow ethical hunting practices established to protect wildlife and allow DWR to implement its management objectives;
- (d) hunting violations harm wildlife resources, DWR's ability to manage that resource, and the expectations of other hunters;
- (e) preventing wildlife law violators from hunting for a period of time redresses harm they have caused by preventing them from committing further violations and provides opportunities to other hunters who have not violated DWR rules; and
- (f) the period of suspension imposed by this Order is consistent with the remedy imposed in other, similar situations.

ORDER

Based upon the foregoing, and in accordance with Utah Code Annotated § 23-19-5 and previous Board actions, the Board orders that:

- (1) The Hearing Officer's January 2, 2001 Decision and Order suspending Joseph J. Bradbury's hunting privileges for a period of five years is affirmed. Accordingly, Mr. Bradbury's hunting privileges are suspended for a period of five years beginning November 29, 2000, and

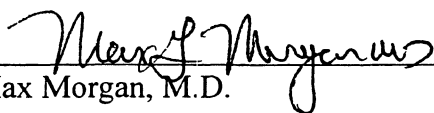
ending November 28, 2005.

(2) During this suspension period, Mr. Bradbury may not obtain or possess any hunting license issued by the State of Utah. Any Utah hunting license obtained during this period is invalid.

(3) Mr. Bradbury is hereby notified that this Order is given reciprocal recognition by all states participating in the Wildlife Violator Compact, including Arizona, Colorado, Idaho, Maryland, Minnesota, Missouri, Montana, Nevada, Oregon, Washington, and Wyoming.

(4) Mr. Bradbury is also notified that if he commits a wildlife-related violation during the suspension period, such violation will, by definition, be considered knowing and flagrant and could lead to a suspension of hunting privileges for an additional five years.

DATED this th 26 day of September, 2001.



Max Morgan, M.D.
Board Chair

NOTICE

In accordance with Utah Code Annotated § 63-46b-13, Appellant may seek reconsideration of this Order within 20 days from the issue date. The request must be made in writing to Dr. Max Morgan, Wildlife Board Chairman, 1594 West North Temple, Salt Lake City, Utah 84114-0855. The request should be signed by Appellant, explain the asserted grounds for reconsideration, and contain the date of mailing.

Appellant may seek judicial review of this order in district court by filing a petition for judicial review within 30 days of the date of this Order, in accordance with Utah Code Annotated §§ 63-46b-14, 63-46b-15, and other applicable law.

CERTIFICATE OF MAILING

I, Dana E. Dolsey certify that on the 1st day of ~~September~~^{October}, 2001, I placed in the United

States Mail, postage prepaid, copies of the attached Order addressed to:

Joseph J. Bradbury
4606 N. 50 W.
Provo, UT 84601

Robert C. Fillerup
Attorney at Law
1107 S. Orem Blvd.
Orem, UT 84058
Martin Bushman
Assistant Attorney General
1594 West North Temple, # 300
Salt Lake City, Utah 84116

Dana E. Dolsey

UTAH WILDLIFE RESOURCES
☐ TO: ☐ SEE ME
☐ HANDLE ☐ FOR YOUR INFORMATION

JAN 30 2001

Robert C. Fillerup (#1070)
Attorney at Law
1107 S. Orem Blvd.
Orem, UT 84058
1-801-226-0992

☐ ANS/MY SIGNATURE
☐ ANS DIRECT/COPY TO ME
☐ YOUR COMMENTS

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE RESOURCES

In the Matter of the Permit of:	:	APPEAL
Joseph Bradbury, Respondent	:	
to Harvest Protected Wildlife in the	:	
State of Utah.	:	Case No. 98-0752

Robert C. Fillerup, as counsel for Respondent Joseph Bradbury, and pursuant to U.C.A. §63-46b-12 and Utah Administrative Code R657-26-8, hereby appeals that certain DECISION AND ORDER entered in this matter on the 2nd day of January, 2001.

The grounds for the APPEAL and the relief requested are:

GROUND FOR APPEAL:

1. The Decision and Order totally fails to address the primary issue raised by Respondent; i.e. he was not a resident of Utah "for hunting and fishing purposes" under the statutory definition set forth in the Utah Code. Notwithstanding the fact that Respondent raised the issue of the definition of "resident" in U.C.A. §23-13-36(a), presented evidence on the issue at the hearing, submitted a memorandum on the issue of statutory interpretation at the hearing, and vigorously argued the matter at the hearing, the Decision and Order fails to even cite the relevant and controlling code section, let alone discuss or interpret it. Under a careful and strict interpretation of the definition of "resident" under *that section*, Respondent was not a resident of Utah for hunting and fishing purposes, and therefore, as a matter of *law*, could not have engaged in the

conduct that formed the basis for the license revocation. Ironically, the very Finding of Fact that Respondent “claimed to be an Idaho resident for the purposes of hunting and fishing” automatically precludes his ability to be a resident under §23-13-2(36)(a) *as a matter of law!* Therefore, because Respondent was domiciled in Utah, but “claimed to be an Idaho resident for the purposes of hunting and fishing,” he was a non-resident for *Utah* hunting and fishing purposes.

The definition of “resident” under U.C.A. §23-13-2(36)(a) [and consequently R657-5-2(n)(i)] is clearly problematic. However, that problem is for the State Legislature to remedy. Neither a conservation officer, a hearing officer, nor the Wildlife Board can substitute how they think or wish that section should read for what it actually states. A Memorandum on this issue of statutory interpretation was submitted by Respondent at the hearing.

2. The “Notice of Agency Action” filed in this matter dated the 29th of June, 2000, states in paragraph “2” that the basis of the revocation proceeding was that fact that Defendant plead guilty to a Class A Misdemeanor in the Uintah County Justice Court. At the hearing, Respondent established that the guilty plea was to an Information alleging a crime that occurred on March 21, 1999. A copy of the Information is in the record. Mr. Bradurby *did not plead guilty to*, nor was he ever *convicted of* any crime that occurred in 1997. Yet the Decision and Order only refer to activities occurring in 1997! It is noteworthy that the Decision and Order does not even mention the guilty plea and the problems associated with it. Although it formed the basis for the revocation proceeding in the first place, it was totally ignored in the Decision.

3. The Conclusions of Law in the Decision and Order that “[t]his was a flagrant violation


because Mr. Bradbury harvested a 6-point trophy bull elk without a valid permit,” is unsupported by any of the Findings of Fact. To be sure, *none* of the Conclusions of Law are supported by, or even follow from the Findings of Fact.

4. The Decision and Order misapplies and misinterprets the following Utah Code sections: §23-19-9, §23-20-4, and §23-20-23. In addition the Decision and Order misapplies and misinterprets Utah Administrative Code R657-26-2(a). Finally, the Decision and Order applies Utah Administrative Code R657-26-2(b). This rule is patently defective, conflicts with Utah Code §76-2-103, and is invalid. Defining “knowingly” to include principles of criminal negligence exceeds the scope of authority, and is an abuse of the discretion of the agency. These issues were all raised and argued at the hearing. Again, the Decision and Order simply ignores them.

RELIEF REQUESTED:

Because Mr. Bradbury never did commit any violation of Utah statutory or regulatory laws or rules, the revocation of his hunting privileges is improper and an abuse of discretion. His hunting privileges must be restored immediately. In addition, the elk head confiscated as part of this proceeding must be returned to him. A formal demand for its return was submitted at the hearing, and again has been totally ignored.

Dated this 25th day of January, 2001.



Robert C. Fillerup
Attorney for Respondent, Joseph Bradbury

CERTIFICATE OF MAILING

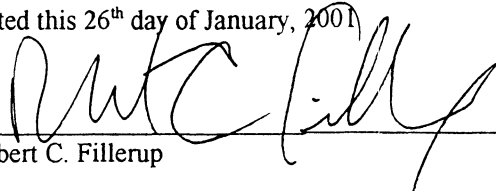
I hereby certify that a true and correct copy of the APPEAL was mailed by first class mail to the following on the 26th day of January, 2001:

Dr. Max Morgan
Chairman, Wildlife Board
1594 West North Temple, Suite 2110
Salt Lake City, UT 84114-6301

Debbie Sundell
Hearing Officer
1594 West North Temple, Suite 2110
Salt Lake City, UT 84114-6301

Joseph Bradbury
4606 North 50 West
Provo, UT 84601

Dated this 26th day of January, 2001


Robert C. Fillerup

**STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE RESOURCES**

In re: Joseph J. Bradbury, Respondent)	
)	
Revocation Proceedings for)	DECISION AND ORDER
Wanton Destruction of Protected Wildlife)	Case No. 98-0752
)	

Notice and Evidence

A notice of agency action was issued by certified mail to Mr. Joseph J. Bradbury on June 29, 2000, commencing an informal adjudicative proceeding and providing Mr. Bradbury with an opportunity for a hearing. On November 29, 2000, Debbie Sundell, presiding hearing officer, held a hearing at Mr. Bradbury's request. Mr. Bradbury appeared and was represented by counsel, Mr. Robert C. Fillerup. The arresting officer, Mr. Jack Topham represented the Division of Wildlife Resources (DWR). Having examined all of the documentation and evidence presented and having heard oral argument and testimony from all parties, I hereby enter the following findings of fact, conclusions of law, and order.

Findings of Facts

Mr. Bradbury obtained an Idaho driver's license and claimed to be an Idaho resident for the purposes of hunting and fishing. In 1997, Mr. Bradbury applied for and obtained a Utah nonresident limited entry Book Cliffs Elk Permit. On the opening day of the 1997 limited entry elk hunt, Mr. Bradbury harvested a 6-point bull elk. Mr. Bradbury is domiciled in the state of Utah and claims residency for business, tax and voting purposes. Mr. Bradbury was recently prosecuted and convicted in Idaho for purchasing resident tags in Idaho.

Conclusions of Law

Utah Code Ann. § 23-19-9 requires that a hunting license, permit, tag, or certificate of registration be revoked if a person “knowingly and flagrantly” . . . violates a provision of Title 23, Utah Wildlife Code.

Utah Code Ann. § 23-20-4 provides that a person is “guilty of wanton destruction of protected wildlife if he . . . destroys protected wildlife . . . with intentional, knowing, or reckless conduct. . . .”

Utah Code Ann. § 23-20-23 provides that it is unlawful for any person to aid or assist any other person to violate any provisions of [Title 23] or any rules or regulations promulgated under it. The penalty for violating [the provision] is the same as for the provision or regulation for which aid or assistance is given.

Utah Administrative Code R657-26-2(a) defines “flagrantly” to mean “an act in violation of Title 23 . . . committed in a manner that . . . is conspicuously bad or offensive.”

Utah Administrative Code R657-26(2)(b) defines “knowingly” to mean “with respect to the nature or the result of a person’s conduct, that the person was aware, or should have been aware, that the conduct was reasonably certain to cause the result.”

Based on the facts derived from testimony presented at the hearing, I determined that Mr. Bradbury knowingly obtained a nonresident limited entry bull elk permit as a Utah resident.

This was a flagrant violation because Mr. Bradbury harvested a 6-point trophy bull elk without a valid permit. In addition, Mr. Bradbury applied for and obtained the nonresident limited entry elk permit clearly in violation of Section 23-19-5 which states in part: "It is unlawful for any person to obtain or attempt to obtain a license, permit, tag . . . by fraud, deceit, or misrepresentation. It is unlawful for a resident to purchase a nonresident license."

The remedy of revoking Mr. Bradbury’s hunting privileges is appropriate because:

- (1) violating hunting laws harms DWR’s ability to manage wildlife;
- (2) hunting is a privilege granted by the state to those who are willing to obey

the laws established to protect wildlife and implement wildlife management programs;

(3) violating wildlife laws harms other sportsman and members of the public who share the resource; and

(4) preventing Mr. Bradbury from hunting for a period of time redresses the harm he caused.

ORDER


Based on the foregoing reasons and the authority of Section 23-19-9 of the Utah Code Ann. 1953, the following order is hereby issued:

1. Mr. Bradbury's big game hunting privileges are suspended for a period of five years beginning November 29, 2000, through November 28, 2005.
2. During the period of suspension, Mr. Bradbury may not hunt big game or obtain or attempt to obtain any permit issued for taking big game, and Mr. Bradbury is hereby put on notice that any big game permits obtained during this suspension period shall be deemed invalid.
3. During the period of suspension, Mr. Bradbury may not obtain or attempt to obtain any big game bonus points or big game preference points issued through the big game drawings, and Mr. Bradbury is hereby put on notice that any big game bonus points or preference points obtained during this suspension period shall be deemed invalid.
4. Mr. Bradbury shall immediately surrender to the Division of Wildlife Resources any license, permit or tag currently held in his possession authorizing him to hunt big game.
5. Any subsequent violation that occurs within the period of suspension shall be construed as a knowing and flagrant violation and may lead to an additional five-

year period of suspension.

6. This order is binding in Utah and all other states participating in the Wildlife Violator Compact, which give reciprocal recognition to this suspension order, including Arizona, Colorado, Idaho, Maryland, Minnesota, Missouri, Montana, Nevada, Oregon, Washington, and Wyoming.

DATED this 2nd day of January 2001.


Debbie Sundell
Hearing Officer

NOTICE

This order may be appealed to the Wildlife Board provided the appeal is filed within 30 days after this order is issued. The appeal must be made in writing to Dr. Max Morgan, chairman of the Wildlife Board, at 1594 West North Temple Suite 2110 Salt Lake City, Utah 84114-6301 and a copy of the appeal must be mailed to the hearing officer at the address listed above. The appeal shall be signed by the respondent, state the grounds for appeal and the relief requested, and state the date upon which it was mailed.

After receiving notice of appeal, the Wildlife Board will schedule a hearing date at its earliest convenience. Notice of such hearing will be provided to all parties. The Wildlife Board will require that all parties attend the hearing and the respondent may bring counsel to appear on his or her behalf. Upon hearing from both parties and reviewing the evidence the Wildlife Board may take no action, vacate or remand the decision of the hearing officer, or amend the number of years of revocation.

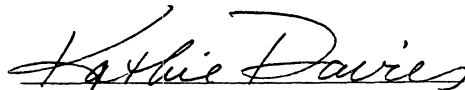
Additional information about the process for appeal may be made directly to the chairman of the Wildlife Board.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing DECISION AND ORDER,
and NOTICE was served by mailing the same, first-class postage prepaid, this 2nd day of January
2001 to:

JOSEPH J BRADBURY
4606 N 50 W
PROVO UT 84601

ROBERT C FILLERUP
ATTORNEY AT LAW
1107 S OREM BLVD
OREM UT 84058


Kathie Davies
Administrative Assistant

**STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE RESOURCES**

In the Matter of the Permit of:)	NOTICE OF AGENCY ACTION
Joseph Bradbury, Respondent)	
to Harvest Protected Wildlife in the)	Case No. 98-0752
State of Utah.)	

1. This Notice of Agency Action is to inform Respondent that the Utah Division Of Wildlife Resources is commencing an adjudicative proceeding to consider the revocation and/or suspension of Respondent's privileges to harvest protected wildlife in the State of Utah. This action is initiated as an informal adjudicative proceeding under the jurisdictional and procedural authority of Utah Code Ann. §§ 23-19-9 and 63-46b-5, and Utah Admin. Code R657-26.

2. The Division alleges that on December 15, 1999, Respondent plead guilty and was convicted in the Uintah County Justice Court of violating Utah Code Ann. § 23-20-4, a Class A Misdemeanor, Criminal Case Number 991800274.

Respondent shot and killed a bull elk with a Non-resident Limited Entry Book Cliffs Elk Permit when he was a resident of Utah.

It is further alleged that Respondent knowingly and flagrantly committed the acts that resulted in the aforementioned conviction.

3. The purpose of this proceeding is to determine whether the facts underlying the criminal conviction were committed knowingly and flagrantly. If the Division determines that the illegal acts were committed knowingly and flagrantly, it may revoke any wildlife licenses or permits that Respondent currently holds or may apply for in the future for a period of time up to five (5) years.

4. Respondent is entitled to request a hearing before the Division to contest the allegations in the Notice of Agency Action. The request for hearing must be made in writing and received by the Division no later than 20 days from the date this notice is issued. If Respondent fails to request a hearing or otherwise fails to respond to the Notice of Agency Action within 20 days, an order of default judgement will be entered revoking Respondent's privileges to harvest protected wildlife in the State of Utah.

5. Upon receiving a request for hearing or a response to the Notice of Agency Action, the Division will schedule a date and time for a hearing where Respondent will have the opportunity to testify, call witnesses, and present evidence in his behalf. Respondent's personal attendance at the hearing will be required where Respondent can either represent himself or employ the services of a legal advisor. Following the hearing, the Division will issue a written decision and order detailing the legal and factual rationale for the decision.

6. The Division will provide Respondent, upon request, any information and documents in its files relevant to this proceeding and to the extent permitted by law.

7. Pursuant to the Wildlife Violator Compact, Title 23, Chapter 5 of the Utah Code, any order revoking or suspending Respondent's privileges to harvest protected wildlife in Utah may be given reciprocal recognition in the following states: Arizona, Colorado, Idaho, Maryland, Minnesota, Missouri, Montana, Nevada, Oregon, Washington, and Wyoming.

8. All written pleadings and communications concerning this Notice of Agency Action shall be identified by the case name and number reflected in the caption of this notice, and directed to Debbie Sundell, Utah Division of Wildlife Resources, 1594 West North Temple,

Salt Lake City, Utah 84116, Phone: (801) 538-4707. If Respondent has any information or a statement that should be reviewed prior to the hearing, he should submit that information to the Division at the above address so that it may be considered and made a part of the record.

DATED this 29th day of June, 2000.

A handwritten signature in cursive script, appearing to read "Debbie Sundell", written over a horizontal line.

Debbie Sundell

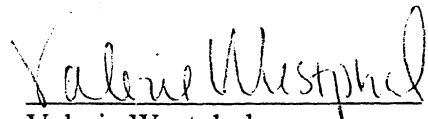
Hearing Officer

Division of Wildlife Resources

CERTIFICATE OF MAILING

I certify that on the 29th day of June, 2000, I caused to be delivered by certified mail, return receipt requested, a true and correct copy of the attached Notice of Agency Action addressed to the following person(s):

Joseph Bradbury
4606 North 50 West
Provo UT 84601

A handwritten signature in cursive script, reading "Valerie Westphal", written over a horizontal line.

Valerie Westphal
Executive Secretary
Division of Wildlife Resources