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The Case Why Pigeons are a Protected Species and Why Pigeon Shoots are Illegal

In 1891, The Pennsylvania Supreme Court overturned the animal cruelty conviction of a participant in a live pigeon shoot held at the Philadelphia Gun Club in Bucks County, PA.

This case, known as "COMMONWEALTH v. LEWIS," has been referenced and used by courts over the past decades for cases involving live pigeon shoots. One such example is "[MOHLER v. LABOR DAY COMMITTEE, INC.](#)" from 1995.

In this case, the Superior Court relied heavily on the 1891 Supreme Court decision:

"We begin our analysis with a discussion of Lewis, the only appellate case in this Commonwealth that our research has disclosed which dealt with similar circumstances."

"The court did not rule, as the trial court suggests, that the treatment of the wounded pigeons at a shooting exhibition could not constitute cruelty to animals. In fact the court wrote: "We do not say there might not be a violation of the act of 1869 at a shooting match, but, in our view, the facts found by the jury do not bring this case within it."

From the 1891 Supreme Court decision. This shows that the Court would have sustained the guilty verdict under the animal cruelty statute had the circumstances been different:

"...were there anything in the finding of the jury to show that the object of this association was to torture pigeons we would not hesitate to sustain the judgment of the court below."

With LEWIS and then MOHLER, we have the Supreme Court and then the Superior Court stating that there could be cruel treatment of pigeons at a live pigeon shoot that would, in fact, violate the law.

• **This means that pigeons are protected by Pennsylvania's anti-cruelty statute.**

If pigeons were not protected by law, then you could commit any manner of cruelty against them because they would be an unprotected species.

The 1891 decision, however, also stated that the act of shooting a pigeon at a pigeon shoot would not be illegal. That dilemma - that pigeons are a protected species but shooting them does not violate the law - stems entirely from the fact that the 1891 Supreme Court saw pigeons as "*wild game*" animals.

"It is doubtless true that much pain and suffering is often caused to different kinds of game by the unskillfulness of sportsmen. A squirrel, badly wounded, may yet crawl to its hole, and suffer for many hours or days, and die. So with birds. They are often badly wounded, and yet manage to get away only to suffer. It was not pretended that the act [animal cruelty statute] applied to such cases."

The Court made a direct correlation linking pigeons, hunting and hunted wildlife, and that the animal cruelty law of that day did not apply to hunting.

"The sportsman in the woods is not responsible for the accuracy of his aim, under the act of 1869. At the same time it is manifest that much suffering would be spared wild game if sportsmen were better trained."

Sportsman. Wild game. The Court repeated itself that pigeon shooting was hunting. While we do not know what the status was of pigeons 122 years ago, we do know that today they are neither "game" nor "wildlife," and we know this because we have a letter, dated June 15, 2012, from the Pennsylvania Game Commission detailing the exact reasons why:

The definitions of **game** and **wildlife** as referenced in this section are found in Title 34, Section 102 entitled "Definitions". Game is defined as "*Includes "game animals", "game birds" and any facsimile thereof.*" Pigeons are not included in any of these definitions. Additionally, wildlife is defined as "*Wild birds, wild mammals and facsimiles thereof, regardless of classification, whether protected or unprotected, including any part, product, egg or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.*" The definition of "Wild birds" as used in the definition of "Wildlife" is also found in Title 34, Section 102 and is defined as "*All migratory birds as defined in 50 CFR by the United States Fish and Wildlife Service of the Department of the Interior, game birds and any other birds designated by the commission, including, but not limited to, grouse, partridge, pheasant, quail, and wild turkey.*"

Pigeons are not included in 50 CFR, they are not listed in the definition of "game birds", and they are not designated by the commission, thus, by statute, the Pennsylvania Game Commission has no legal authority to regulate any issue involving pigeons. Any mention of the term "bird" in Title 34, must fall within the statutory authority that is vested in the commission and that does not include, by statutory definition, pigeons.

The Supreme Court in 1891 ruled that you could shoot pigeons and it would not violate the law because they equivocated pigeon shooting with hunting and pigeons as game animals. Today, pigeons are neither game animals nor regulated as a hunted species.

This critical difference in pigeon status has gone unrealized by every court

that has heard a pigeon shooting case. This explains the dichotomy in the 1891 decision, and the inherent flaw in every legal case heard since.

In the following paragraph from the 1891 decision, the Court directly compared pigeons to wild birds:

“It is conceded that the sportsman in the woods may test his skill by shooting at wild birds. Why, then may he not do the same with a bird confined in a cage, and let out for that purpose? Is the bird in the cage any better, or has it any higher rights, than the bird in the woods?”

The answer to the Supreme Court’s question is “yes,” caged pigeons do have higher rights than wild birds shot by hunters. They do because they are not a regulated hunted species and because they have protection under the animal cruelty statute, as the Supreme and Superior Courts have acknowledged.



COMMONWEALTH OF PENNSYLVANIA
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*"To manage all wild birds, mammals and their habitats
for current and future generations."*

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June 15, 2012

Stuart Chaifetz
220 Dobson Lane
Cherry Hill, NJ 08003

Dear Mr. Chaifetz,

I am writing in response to your email dated June 11, 2012 regarding why Title 34, Section 2928(h)(3) does not apply to pigeons.

As I stated during our phone conversation on June 11, 2012, the Pennsylvania Game Commission has no legal authority to regulate any issue involving pigeons. Title 34 (known as the Game and Wildlife Code), Section 103 entitled "Ownership, jurisdiction and control of game and wildlife", states that "*The ownership, jurisdiction over and control of **game** or **wildlife** is vested in the commission as an independent agency of the Commonwealth in its sovereign capacity to be controlled, regulated and disposed of in accordance with this title.*"

The definitions of **game** and **wildlife** as referenced in this section are found in Title 34, Section 102 entitled "Definitions". Game is defined as "*Includes "game animals", "game birds" and any facsimile thereof.*" Pigeons are not included in any of these definitions. Additionally, wildlife is defined as "*Wild birds, wild mammals and facsimiles thereof, regardless of classification, whether protected or unprotected, including any part, product, egg or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.*" The definition of "Wild birds" as used in the definition of "Wildlife" is also found in Title 34, Section 102 and is defined as "*All migratory birds as defined in 50 CFR by the United States Fish and Wildlife Service of the Department of the Interior, game birds and any other birds designated by the commission, including, but not limited to, grouse, partridge, pheasant, quail, and wild turkey.*"

Pigeons are not included in 50 CFR, they are not listed in the definition of "game birds", and they are not designated by the commission, thus, by statute, the Pennsylvania Game Commission has no legal authority to regulate any issue involving pigeons. Any mention of the term "bird" in Title 34, must fall within the statutory authority that is vested in the commission and that does not include, by statutory definition, pigeons.

Additionally, I will address the portion of your email where you reference the website address for the "Adopted 2012-13 Hunting Seasons and Bag Limits" where it states "No open season on other wild birds or mammals". The definition of "wild birds" is found in Title 34, Section 102 as previously defined, and does not include pigeons for the reasons outlined in this letter.

I trust I have answered your inquiry accordingly. If you have any other questions, you may contact me at 717-783-8164.

Sincerely,

A handwritten signature in cursive script that reads "Chad R. Eyler".

Chad R. Eyler, Chief
Special Permits Enforcement Division
Bureau of Wildlife Protection