

22 February 2007

Mark Holsten, Commissioner
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4040

**Re: *In the Matter of the Trespass Citation Issued to Tim Reinke,
Citation No. 48809
OAH Docket No. 58-2000-17753-2***

Dear Commissioner Holsten:

The above-entitled matter came on for a prehearing telephone conference call on February 5, 2007 at 10:00 a.m. Participating in the call were the Administrative Law Judge, Conservation Officer Lawrence Hanson and Tim Reinke. The participants had previously agreed that hearing could be delayed until February 5, 2007. At the February 5th hearing, they agreed that no formal hearing would be needed, and the ALJ could decide the matter based on what was discussed at the prehearing telephone conference.

The facts are as follows. On November 24, 2006, Mr. Reinke was hunting with his son and brother-in-law in Island Lake Township, Lyon County. Mr. Reinke had with him a hunting dog. From public ground, Mr. Reinke shot a rooster, which fell a couple of hundred yards away onto private, posted land. Mr. Reinke unloaded his gun, left it with his brother-in-law, and proceeded towards the felled bird.

The landowner saw Mr. Reinke leave the public land, cross the landowner's chiseled soybean field, then a strip of conservation land, and finally a small oat stubble field. Just before Mr. Reinke was about to enter the landowner's corn field, the landowner drove his truck to where Mr. Reinke was. The landowner told Mr. Reinke he was trespassing. According to the landowner, Mr. Reinke responded he could enter the land to retrieve a wounded pheasant. The landowner told Mr. Reinke he could not do so, because the land was posted. The landowner took a photo of Mr. Reinke and his dog, then left and took a photo of Mr. Reinke's truck, which was parked just off the state land.

In his appeal letter Mr. Reinke maintained that he went on to the private land to retrieve his dog, which had gone after the felled rooster. At hearing, he

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again relied on the exception in the statute that allows a hunter to enter posted land for the purpose of retrieving a hunting dog.¹ Mr. Reinke admits that he knew the land was posted. He states that his knowledge of the posting is what caused him to leave his gun behind when he approached the area of the downed bird. He argues that he did no more than allowed by the law in entering the posted land.

The Administrative Law Judge concludes that the landowner's version of the facts is more credible than the hunter's. The hunting dog was a trained animal that was well under control by the time the landowner approached Mr. Reinke. At hearing, Mr. Reinke admitted the animal was trained and under control. For this reason, it is unlikely that Mr. Reinke was forced to go on to private land to retrieve his dog. In addition, the landowner would have no motive to invent Mr. Reinke's response about going after a felled pheasant. It seems more likely than not that Mr. Reinke was attempting to retrieve the bird from posted land, thereby justifying the imposition of the penalty.

Under the circumstances of this case, I recommend that citation number 48809 be affirmed. I am closing our file in this matter and returning the record to you.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of this recommendation before he makes a final decision. Within those five days, the persons to whom the order is issued may comment on this recommendation. The Commissioner must send a copy of his final decision to Mr. Reinke. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.

s/Linda F. Close/dsc
LINDA F. CLOSE
Administrative Law Judge

Enc.
Cc: Officer Lawrence Hanson
Tim Reinke

¹ Minn. Stat. § 97B.001, subd. 6.