

State Game and Fish Laws, Lakes and Ponds, Stocking of by Individuals. Fish, Stocking of Lakes and Ponds With. Private Ponds and Lakes, Stocking of. Artificial Ponds and Lakes, Stocking With Fish. Natural Lake, Use of by Individual as Any Other Pond.

The law relating to the stocking of natural and artificial lakes with fish by private individuals and the right to use a natural lake as a private fish pond, construed.

December 9, 1914.

Hon. E. P. Mathewson,
Chairman Game and Fish Commission,
Anaconda, Montana.

Dear Sir:

I am in receipt of your letter of the 24th ultimo, submitting for the consideration of this office a letter addressed to the Commission by Mr. Schrader and Dowdell, relating to the law of this state concerning the stocking of natural lakes or ponds by individuals, and also to artificial ponds created on private land. I am not informed as to what specific questions are required to be dealt with, as the letter makes very general statements relative to the right to the use of a natural lake, and then requires a construction of the law of 1913, relating to private fish ponds.

The law relating to the use of a natural lake as a fish pond by private individuals is contained in Chapter 142, Laws of 1909. This act has heretofore been considered by this department, and the conclusion reached that the specific provisions and requirements of the law must be complied with before the rights granted therein attach.

Opinions Attorney General, 1908-10, p. 91.

The provisions of this law grants certain special rights and privileges to individuals who comply therewith, which rights and privileges are not enjoyed or possessed by the people generally. Hence, being in the nature of granting special privileges, the terms and provisions of the law must be strictly complied with. These terms are specific, emphatic, and mandatory, and no department of the state government has any authority to depart therefrom. Hence, in dealing with the request or de-

mand, the fish commission can only look to the terms of the law, and then ascertain in the same manner as it would determine any other question of fact, as to whether the things required by the law have been done. If those things have not been done, then the party is not entitled to any of the privileges granted by the law. If they have been done, then the party is entitled as a matter of law to the rights and privileges therein named, but there cannot be rightfully any waiving of the terms of the statute, nor can there rightfully be anything added to it. The intimation is made in the letter that these parties have suffered some loss by reason of some order given by the State Game Warden, and that they should be granted certain credits, or permission to do certain things by reason of this fact, but that is not the way to settle claims held by anyone against the state or any department thereof. Special privileges can be granted only when specifically authorized by law, and then in accordance with the terms of the law, and in no other way.

Section 4, Chapter 79, Laws 1913, contains the provisions relating to private fish ponds, that is to ponds artificially created on private lands, and outside of the bed or course of a natural stream. This law likewise contains certain restrictions and requirements, certain things to be done by the owner of such pond.

Without any specific question being presented, I am not able to go more thoroughly into the construction of either one of these laws, than to say that said Chapter 142, Laws 1909, being an act granting special privileges on certain terms and conditions must be fully complied with in all its provisions, before the Commission is authorized to recognize the right in the claimant to the privileges conferred by that act, the said Section 4, Chapter 79, Laws of 1913, is a regulation relative to the rights of an owner of a private pond to use the same and to dispose of the product thereof, and that the provisions of this act must also be complied with by the owner of such pond before he has the right conferred by the Section to dispose of his product. I herewith return correspondence enclosed with your letter.

Yours very truly,

D. M. KELLY,
Attorney General.