

Opinion No. 235.

Fish and Game—Power of Commission—Power to Purchase Water—Contracts Beyond Term.

HELD: The fish and game commission, under the provisions of Section 3653 has power to purchase water for the purpose of protecting, preserving and propagating fish in the State of Montana.

It is extremely doubtful that the fish and game commission has power to enter into the purchase of water for a period of thirty years or beyond the term of the commission.

May 17, 1940.

Hon. J. A. Weaver
State Game Warden
The Capitol

Dear Mr. Weaver:

You have submitted the following question:

"The State Water Conservation Board proposed to sell water to the Fish and Game Commission in their reservoirs, so as to protect the fish life. The question arose as to whether or not the Commission has authority to enter into a contract covering a period of 30 years with the State Water Conservation Board."

The fish and game commission has rather broad powers under Section 3653, R. C. M., 1935. Among other things this section provides:

"* * * It shall have the exclusive power to expend for the protection, preservation and propagation of fish, game, and fur-bearing animals, and game and non-game birds, all funds of the State of Montana collected or acquired for the purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise, * * *

"It shall have authority to acquire by gift, purchase, capture or otherwise, any fish, game, game birds, or animals, for propagation, experimental or scientific purposes. It shall have authority to acquire by purchase, condemnation, lease, agreement, gift, or devise, lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes:

(a) For fish hatcheries, nursery ponds, for game farms; (b) Lands or waters suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; * * *."

These sections would seem to authorize the fish and game commission to purchase water in case it is necessary to protect, preserve and propagate fish.

It is a general rule, however, that officers do not have power to make a contract for an indefinite or long extended term beyond their own term. The general rule is stated in 46 C. J. 1032, Section 289, as follows:

"Because a public official, for a known and limited term, has power to make a contract, he is not authorized thereby to make one for an indefinite or long extended term; ordinarily the power is limited in time to the term of the officer who makes it, but if the extent of the officer's power is not expressly limited, the facts and circumstances of each case must be considered in determining it. And necessity, or its equivalent of great advantage to the principal, may furnish a reason for enlargement beyond the term, but he who asserts the existence of the necessity or great benefit has the burden of proving it."

I am therefore of the opinion that while the commission has the power to purchase water for the purpose above mentioned, it is extremely doubtful that the commission would have power to enter into a contract for a period of thirty years. It occurs to me that possibly the commission might protect fish in the State of Montana and the interest of the state by making a contract for a short term and providing therein for an option to renew the contract by providing for the option for continued renewals. The commission would not be exercising authority beyond its term and authority which should properly be left to its successors but at the same time it would provide its successors with the power to continue the policy and protection if they so desire.