

Saw Dust, Penalty for Dumping in Streams. Fish, Protection From Saw Dust.

The penalty for dumping saw dust in streams is provided by Section 8797, Revised Codes, and Section 8798, attempting to cover the same subject, is void.

Helena, Montana, February 20, 1909.

Hon. Henry Avare, State Game and Fish Warden, Helena, Montana.

I am in receipt of your letter of the 18th inst., requesting an opinion upon the following question:

Which of the following sections of the Revised Codes of Montana of 1907 is in force and should be followed in prosecuting persons for dumping saw dust in streams, to-wit: Section 8797 8798.

The legislative assembly of 1897, by House Bill No. 123 (Session Laws of 1897, p. 249), repealed, among other sections, Section 1123 of

the Penal Code of Montana, and enacted a new law relating to the protection of game and fish of the state. Section 14 of this new law has never been amended or repealed, and is now inserted in the Revised Codes of 1907 as Section 8797.

Thereafter, the legislature of 1903, by Chapter 3, Laws of 1903, attempted to amend Section 1123 of the Penal Code. But, as shown above, Section 1123 of the Penal Code was absolutely repealed in 1897. Therefore, the attempted amendment of said Section 1123 by the Legislature of 1903 was void and of no effect whatever, for it is a well established principle of law that you cannot amend that which does not exist.

This attempted amendment of Section 1123 by the legislature of 1903 is incorporated in the new Code as Section 8798, but as this amendment is void it follows that Section 8798 is also void; and, therefore, in no way amends or repeals said Section 8797.

You are therefore advised that the only section to be followed in prosecuting persons for dumping saw dust in streams is said Section 8797 of the Revised Codes of 1907.

Very truly yours,

ALBERT J. GALEN,

Attorney General.