

**Fish, Protection Of. Sawdust, Dumping Into Stream. Streams and Lakes, Pollution of With Sawdust.**

A lake is not a stream within the meaning of Section 8797, Revised Codes, and dumping sawdust into a lake is not a violation of said section.

Where sawdust is carried from a lake into a stream it would be a violation of such statute.

Sept. 10, 1910.

Mr. Henry Avare,  
State Game and Fish Warden,  
Helena, Mont.

Your letter of September 9th, requesting an opinion upon the following proposition "as to whether or not Sec. 8797 of the Revised Codes of Montana of 1907 makes it an offense to dump, or permit sawdust, etc., to be deposited in a lake as well as a stream near which a sawmill is operat-

ed, and whether there is any difference between a lake which is a dead body of water and one having a distinct outlet and inlet," has been received.

In reply we will say that Sec. 8797 of the Revised Codes provides:

"Every person who operates any saw-mill on or near any stream, who dumps, drops, carts, deposits, or causes to be deposited in any such stream, any saw dust, bark, or debris, coming from said saw-mill, is punishable by a fine not less than fifty dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than thirty days, nor more than ninety days, or both such fine and imprisonment, in the discretion of the court."

Sec. 8798 of the Revised Codes provides:

"Every person who operates any saw-mill, pulp-mill, paper mill or wood manufacturing plant on or near any stream, lake, or any body of water connected with any stream or lake, who dumps, drops, carts, deposits, or causes to be deposited in such stream, lake, or body of water connected with any stream or lake, any saw-dust, bark, chemicals, refuse or debris coming from said saw-mill, pulp-mill, paper-mill or wood manufacturing plant, is punishable by a fine not exceeding five hundred (\$500) dollars."

The legislative assembly of 1897, by House Bill No. 123, (Session Laws of 1897, p. 249) repealed, among other sections, Section 1123 of the Penal Code of Montana, and enacted a new law relating to the protection of game and fish of the state. Sec. 14 of this new law has never been amended or repealed and is now inserted in the Revised Codes of 1897 as Sec. 8797.

Thereafter the legislature of 1903, by Chapter 3, Laws of 1903, attempted to amend Sec. 1123 of the Penal Code, but, as shown above, Sec. 1123 of the Penal Code was absolutely repealed in 1897, therefore the attempted amendment of said Section 1123 by the legislature of 1903 was void and of no effect whatever.

This attempted amendment of Section 1123 by the legislature of 1903 is incorporated in the codes as Sec. 8798 above quoted, and, as this amendment is void, it follows that Sec. 8798 is also void, and is, therefore, of no force or effect.

See opinion of attorney general, Feb. 20, 1909.

The answer to your question now depends wholly upon the construction of Sec. 8797 of the Revised Codes.

Sec. 8096 of the Revised Codes provides:

"The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice."

The construction of Sec. 8797 with reference to the question propounded by you resolves itself into a determination of the meaning of the word "stream." The standard dictionary defines the word "stream"

as "any course of flowing water, as a river or brook; anything issuing or entering and continuously flowing, moving or passing."

The same dictionary defines the word "lake" as "an inland body of water or natural enclosed basin serving to drain the surrounding country; a small artificial pond of water."

The controlling distinction between a stream and a pond or lake is that in a stream the water has a natural motion, or a current, while in a pond or lake the water is, in its natural state, substantially at rest. This is so independent of the size of the one or the other.

Words & Phrases, Vol. 7, p. 6684.

It would therefore appear that a stream is not a lake, and the word "stream" does not include a lake within the general meaning or acceptance of the word. This being true, in our opinion Section 8797 does not include lakes, and a person dumping saw-dust into a lake could not be convicted for a violation of Section 8797.

However, if the lake has an outlet, and by reason of the dumping of the sawdust, etc., into the lake it flows or is carried into the stream, we believe the intent and meaning of the statute would be violated as much as though the sawdust were dumped directly into the stream, and we believe that persons could be convicted of dumping sawdust into the stream by such means.

Yours very truly,

ALBERT J. GALEN,

Attorney General