

Fish Hatchery, Private in Natural Lake. Lake, Fish Hatchery in Where Surrounding Land Is Owned by Private Parties.

In order to be entitled to catch fish with a seine, hook and line for the purpose of selling out of a natural lake, a person must own or control all the land surrounding such lake. Before he has a right to sell fish out of such a lake he must have maintained a fish hatchery, as provided in Section 1, of Chapter 142, for at least three years. Said Chapter 142 repeals by implication the provisions of Section 8794, Revised Codes, which are in conflict therewith. Section 3, of said law, does not make the law unconstitutional, as it merely imposes conditions which must be accepted by persons before they can enjoy the privileges given them under such law.

Helena, Montana, April 26, 1909.

Montana State Fish Commission, Helena, Montana.

Gentlemen:

I am in receipt of a letter from your secretary, stating that you desire an opinion upon the following questions, to-wit:

1. Under the provisions of Chapter 142, Laws 1909, must a person own all of the land surrounding a lake or pond before he is entitled to maintain a fish hatchery and to catch fish in such lake or pond with a seine, hook or line for the purpose of selling the same within this state?

2. Must a person establish, operate and maintain a fish hatchery of the capacity mentioned in said law for a period of three years from and after the passage of said law before he is entitled to catch and sell fish, or can he catch and sell fish at this time provided he has maintained such a fish hatchery for three years heretofore?

3. Does this section amend Section 8794 of the Revised Codes?

4. Does Section 3 of said law, which provides that any person may catch fish with a hook and line from any such lake or pond, and may camp upon the lands adjacent thereto, make the law unconstitutional?

In answer to your first question you are advised that a person, in order to catch fish with a seine or hook and line, for the purpose of sale in the State of Montana, must own or control, as lessee or otherwise, all the land surrounding any lake or pond; that is, the lake or pond must be completely surrounded by land owned or under the control of a person, or company, before he, or it, is entitled to the privileges conferred by said law.

In answer to your second question you are advised that if a person has heretofore established a fish hatchery, with a capacity of five hundred thousand fish eggs at one hatch, and has deposited in said lake not

less than five hundred thousand spawn or fry annually for three years prior to the passage of the above law, that he would be entitled to catch and sell fish in the manner provided therein at this time. However, the burden is upon such person to satisfy the State Game Warden by affidavits, or other satisfactory proof, that he has for three years past operated and maintained in said lake or pond a fish hatchery with a capacity for hatching five hundred thousand fish eggs, and has deposited in said lake or pond not less than five hundred thousand spawn or fry annually for three years past. In other words, a person is not entitled to catch and sell fish in the manner provided in said law until he has operated and maintained a fish hatchery in the manner therein provided for at least three years.

In answer to your third question you are advised that said Chapter 142 is special legislation, relating exclusively to lakes and ponds which are entirely surrounded by land owned, or otherwise controlled, by an individual or company, and such law being a later enactment than Section 8794, Revised Codes, would, by implication repeal said section in so far as they conflict.

In answer to your fourth question you are advised that Section 3 of said law does not render the law unconstitutional. The only person who could complain of the provisions of said Section 3 would be the person who owns or controls the land surrounding the lake or pond, and who operated and maintained the fish hatchery in the lake, and he cannot be heard to complain, for the reason that the law gives special privileges to such person to catch and sell fish upon the conditions contained in the law, and if such persons do not wish to accept the conditions upon which they are permitted to catch and sell fish they cannot attack the law for the purpose of eliminating the conditions unsatisfactory to them and at the same time accept the conditions of the law which are favorable to them. They have got to accept the law as a whole or not at all.

Of course, our understanding of said Chapter 142 is that it relates to natural lakes and ponds, where individuals or companies have acquired by ownership, or otherwise, all the land surrounding such lake or pond, and what is said above would not apply to a private pond constructed and maintained by a person for his own private use and benefit.

Very truly yours,

ALBERT J. GALEN,

Attorney General.