

**Boats, License for Conducting on Navigable Waters. Navigable Waters, License for Operating Boats On. Navigable Waters, What Are. Waters-Navigable, Jurisdiction Over by State.**

Chap, 105, Session Laws of 1911, applies to all boats and vessels plying the navigable waters of this state carrying passengers and freight for hire, or towing for hire.

The state, in so far as the navigable waters are within its

territorial limits, without regard to whether they do or do not connect with waters outside these limits, has exclusive jurisdiction subject to the paramount right of congress to regulate commerce and to legislate concerning the use thereof.

August 14, 1911.

Railroad Commission of Montana,  
Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 4th inst., requesting my official opinion as to whether or not a boat engaged in navigation for hire on the waters of Hauser lake (being an expansion of the Missouri River in this county) would require a federal or state license in accordance with the provisions of Chapter 105, Session Laws of 1911.

In reply I will say that said Chapter 105, by its terms applies to all boats, vessels and ferryboats, plying the navigable waters of this state and carrying passengers, or freight for hire, or towing for hire; but, of course, could only apply to such waters as the state has jurisdiction over, for the purpose of navigation. The state, insofar as navigable waters are within its territorial limits, without regard to whether they do, or do not, connect with waters outside its limits, has exclusive jurisdiction, subject to the paramount right of Congress to regulate commerce, to legislate concerning the use thereof.

29 Cyc. 295, and cases cited.

Navigable waters of the United States are under the control of Congress, which has power to legislate in regard thereto, so far as commerce is concerned.

29 Cyc. 294, and cases cited.

Waters are navigable waters of the United States in contradistinction to navigable waters of the state, when they form in their ordinary condition, by themselves, or by uniting with other waters, a continuous highway over which commerce is, or may be carried on with other states or foreign countries in the customary modes in which commerce is conducted by water.

1 Cyc. 817, and cases cited.

Assuming that Hauser lake is a navigable body of water within this state, it is subject to the provisions of Chapter 105 above referred to, unless (1) Congress has passed legislation inconsistent with said chapter, or (2) it constitutes navigable waters of the United States within the definition above given. Congress has not passed any legislation with reference to the commercial use of this lake inconsistent with such chapter, so far as our research has disclosed; and from its physical situation, the lake cannot be classed as "navigable waters of the United States," for the reason that Hauser dam, which crosses the Missouri river and forms the lake would prevent" a continuous highway over which commerce is, or may be, carried on with other states or foreign countries, in the customary modes in which commerce is conducted by water;" and for the further reason that the head of navi-

gation on the Missouri is at a point about the mouth of the Highwood river, a short distance above Fort Benton.

You are therefore advised that if Hauser lake is a navigable body of water, it comes within the provisions of Chapter 105, Session Laws of 1911, and persons operating a boat thereon carrying freight or passengers, for hire or towing for hire, must obtain the license provided for by this chapter and are subject to the inspection therein provided for.

Yours very truly,

ALBERT J. GALEN,

Attorney General.