

Game and Fish Laws, Taking of Fish by Use of Seine.  
Seine, What Is. Fish, Taking of by Use of a Seine. Gill  
Net, What Is.

The use of a seine for the taking of fish is permitted by Sec. 2, Chapter 79, Laws of 1913, the word "seine" being specifically used therein. The definition of the word "seine" is found in the opinion, as is also the definition of the words "Gill Net." The use of gill nets is not authorized under Sec. 2, Chapter 79, Session Laws of the 13th Legislative Assembly.  
April 25th, 1913.

Hon. J. L. De Hart,  
State Game and Fish Warden,  
Helena, Montana.

Dear Sir:

Pursuant to your request for my interpretation of that portion of Sec. 2 of Chap. 79 of the Session Laws of the Thirteenth Legislative Assembly, dealing with the taking of fish by means of a seine in certain specified waters of Montana, I will say that part of the act uses the word "seine" specifically, and does not mention any other sort of snare or net for the taking of fish. "Seine" is defined by the Century Dictionary as follows:

"A kind of net used in taking fish; one of the class of encircling nets, consisting of a web of net work, provided with cork or floats at the upper edge, and with loads of greater or less weight at the lower, and used to enclose a certain area of water, and by bringing the ends together either in a boat or on the shore to secure the fish that may be enclosed." A gill net is defined by the same authority as:

"A net which catches fish by the gills. A gill net is set in the form of a curtain, suspended vertically from floats on the surface of the water by means of weights or bullets."

From these definitions, it will be seen that there is a distinction between the two nets. In as much as the statute uses the word "seine," the only construction which can be put upon it is that it intended the use of seines and not of gill nets, on the familiar maxim that the expression of one thing excludes the other.

For this reason it is my opinion that the Legislature intended the use of seines in the waters mentioned, and that the use of gill nets would not come within the purview of the statute, and would therefore be unlawful.

Very truly yours,

D. M. KELLY,  
Attorney General.