

Game Fish, Sale of.

It is lawful to sell Montana white fish, if legally caught, and lawful to sell game fish of any kind taken from private ponds and lakes artificially created in private lands.

January 6th 1913.

Hon. Dan J. Heyfron,
County Attorney,
Missoula, Montana.

Dear Sir:

I have your request for an opinion as to whether it is unlawful to sell Montana white fish in this state, and in reply will say that Sec. 8794, Revised Codes of Montana of 1907, provides:

"Every person who in any way catches any trout, grayling or black bass; or who shall remove the eggs from any of such fish for speculative purposes, for market or for sale, or who shall sell, or offer for sale, any trout, grayling, black bass, or eggs or spawn therefrom, shall be punishable," etc.

It will be observed that this section does not provide generally against the sale of game fish, but enumerates several distinct species thereof, exclusive of the Montana white fish, which it is made unlawful to sell. The Thirteenth Legislative Assembly in the enactment of Chapter 79 defined the term "game fish" and this term now includes Montana white fish. The eighth section of the act provides:

"Any person or persons * * * who shall sell or offer for sale any of the game fish that have been taken or killed contrary to the provisions of this act, knowing or having reason to know or believe that such fish were so illegally caught, taken or killed, shall be deemed guilty," etc.

Any person holding a license under the laws of this state may under the fifth section of the act take from the public waters of this state not more than twenty-five pounds of any game fish in any one day, the weight to be computed after the fish are cleaned, and may take in addition ten fish less than six inches in length. It is also lawful under the same section for any person to have in his possession not more than fifty pounds of game fish at any one time.

It follows, therefore, that there is not now any prohibition in this state against the sale of Montana white fish that have been legally

caught, provided that the quantity in any one person's possession at any time does not exceed fifty pounds. This conclusion follows from the fact that there is not now in force in this state any law prohibiting in general terms the sale of game fish.

And even this restriction as to quantity does not apply to game fish taken from private ponds or artificially created outside the beds or course of natural streams, and upon private lands; the owner whereof having the right and authority upon compliance with Sec. 4 of the act to catch fish therein and sell the same without restriction, either as to the manner of taking or the selling thereof, and whether the same be Montana white fish or any other species of game fish.

Very truly yours,

D. M. KELLY,
Attorney General.