

Fish—Game—Licenses—Duplicates—Fish and Game.

If the holder of a fishing or hunting license has lost it and cannot exhibit it to an officer on demand, he cannot lawfully take fish or game in view of the provisions of section 3689 R. C. M., imposing on the licensee the duty to have the license in his possession.

Upon a satisfactory showing being made that a person has procured a fishing or hunting license and has lost it, the fish and game department may legally issue a duplicate license.

Robert H. Hill, Esq.,
State Game Warden,
Helena, Montana.

July 23, 1927.

My dear Mr. Hill:

You have requested my opinion upon the following question:

· “In the event one who has purchased a hunting and fishing license should lose the same and takes fish and game without said hunting and fishing license being in his possession, and being unable to exhibit the said hunting and fishing license to

a deputy state fish and game warden or other officer requesting to see the same, would he not be in violation of the law in accordance with the provisions of section 3689 of the revised codes? Also, is there any provision in the fish and game laws for the issuance of a duplicate license?"

Section 3689 R. C. M. 1921, as amended by chapter 59, section 10, session laws of 1927, provides in part that it shall be unlawful and a misdemeanor for any person to whom a license or permit has been issued, to fish or to take any game unless at the time he shall have such license or permit in his possession and that it shall be unlawful to refuse to exhibit the same for inspection to any deputy state fish and game warden or other officer requesting to see the same.

This statute clearly imposes upon the holder of a fishing or hunting license the duty to have such license in his possession when he takes fish or game.

It is therefore my opinion that if the licensee has lost his license and takes fish or game without it, he has violated the provisions of section 3689 and would be liable to prosecution thereunder.

I express no opinion, however, as to the probability of a conviction being secured in a case of that sort.

As to your second inquiry, there is no provision in the fish and game laws of this state for the issuance of a duplicate license. It is my opinion, however, that it is not necessary that express statutory authority be given to an officer to issue a duplicate license or other instrument which he has issued in his official capacity. Furthermore, the document commonly called "license" is but the evidence of the license or permission to carry on a particular business.

The courts have sometimes held that the document itself is not essential to the existence of the authority. (See *Moore v. City of St. Paul* [Minn.] 63 N. W. 1087).

It is my opinion that upon a satisfactory showing being made to your office that a person has procured a license and has lost the same, you have authority to issue a duplicate license to such person.

Very truly yours,

L. A. FOOT,
Attorney General.