

**Fish and Game—Artificial Lakes—Fish Ponds—Dams.**

A private fish pond for commercial purposes cannot be created by damming a natural stream.

September 26, 1928.

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

My dear Mr. Hill:

You have requested my opinion whether a private fish pond for commercial purposes can be created by placing a dam in a creek and damming up the water and thereby creating an artificial storage of water.

Paragraph 6 of section 3695 R. C. M. 1921, as amended by chapter 72, laws of 1925, provides in part as follows:

“The words ‘artificial lake or pond’ as herein used shall not be construed to include any natural pond or body of water created by natural agencies, but shall be limited only to such bodies of water as are created by the artificial diversion or storage of water, and shall not exceed one hundred acres of surface area.”

While this definition is not as certain as it might be and might give rise to the contention that the erection of a dam created an artificial storage of water, yet it is evident that the legislature did not intend by this section to authorize the obstruction of any natural streams by individuals. This is shown by the provisions of section 3653 of said act wherein it is provided as part of the duties of the fish and game commission that,

“It shall be its duty to furnish plans for, and to direct and compel the construction and installation and repair of fish ladders upon dams and other obstructions in streams, which, however, shall be installed and maintained at the proper cost and expense of the owner or owners of the same.”

As it is a general rule of statutory construction that in construing the meaning of a statute the legislative intention must be followed, if possible, it is my opinion that a private fish pond for commercial purposes cannot be created by damming a natural stream.

Very truly yours,

L. A. FOOT,  
Attorney General.