

**Opinion No. 224.****Fish and Game Commission—Artificial  
Pond Defined.**

HELD: A pond created by artificial storage, on a creek, is an artificial pond.

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January 12, 1938.

Hon. J. A. Weaver  
State Fish and Game Warden  
The Capitol

Dear Mr. Weaver:

You have submitted a letter from Honorable John W. Kephart, Chief Justice of the Supreme Court of Pennsylvania, date December 23, 1937, and have requested my opinion on the following facts:

Chief Justice Kephart has a ranch known as the Bar "N" on Denny Creek, a tributary of the Upper Madison. He has constructed a dam 100 yards long and 9 feet high in its deepest part, across this creek, which is only 6 feet wide, thus creating a pond over 400 yards wide.

The question is whether this pond is an artificial lake or pond within the meaning of Section 3695, R. C. M. 1935.

The section reads in part:

“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 500 acres of surface area.”

It will be noted that the statute provides that if a lake or pond is created by either artificial diversion or artificial storage, it is an artificial lake or pond within the meaning of the statute. The pond in question is not a natural pond or body of water created by natural agencies; it was created by artificial storage.

It is therefore my opinion that the pond in question is an artificial pond.