

No. 284

FISH AND GAME—FISH, permit to ship from state not required—PERMITS

Held: The owner of an artificial lake or pond who procures a license for the operation thereof from the State Fish and Game Commission, gives bond to the state, and meets all other requirements of Section 3695, Revised Codes of Montana, 1935, is not required—under the provisions of Section 3730, 3731 or 3732, Revised Codes of Montana, 1935—to secure a permit from the State Fish and Game Commission to ship his fish taken from said lake or pond out of the State.

October 28, 1941.

Dr. J. S. McFarland
State Game Warden
Fish and Game Department
Capitol Building
Helena, Montana

Dear Dr. McFarland:

You have asked the following question:

Is the owner of a private artificial lake or pond required to secure a shipping permit before shipping fish taken from said lake or pond out of the State of Montana?

Section 3695, Revised Codes of Montana, 1935, provides:

"Section 3695. Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish. Any person who owns or lawfully controls an artificial lake or pond may stock the same with fry procured from the federal or from the state government at the prevailing market price, providing there is a surplus of said fry, or from any other lawful source, and shall thereafter have the right and privilege to take from said lake or pond in any manner, except by the use of poison or explosives, the fish therein contained, and to sell and dispose of said fish and of eggs and fry therefrom. 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. Provided, however, that such owner shall procure a license in the manner provided by the laws of the state of Montana, and shall furnish a good and sufficient bond to the state of Montana, in the sum of two hundred dollars (\$200.00), conditioned to the effect that he will not sell fish caught in any of the public water of this state, and also conditioned to the effect that such owner or holder will report to the state game warden the quantity of fish, fish eggs and spawn taken from said lake or pond, and sold from and planted in, said lake or pond during any calendar year. Said report to be made under oath annually in the month of January of each year."

Under the provisions of the above quoted section, any person may own or lawfully control an artificial lake or pond and may stock the same with fry and shall thereafter have the right and privilege to take from said lake or pond the fish therein contained and to sell and dispose of said fish and the eggs and fry therefrom after first having obtained a license in the manner provided by law and having furnished a good and sufficient bond to the State of Montana in the sum of two hundred dollars as required by the provisions of said section.

Section 3713 of the Revised Codes of Montana, 1935, provides as follows:

"Section 3713. Sale of fish or spawn prohibited—exceptions. Every person who in any way catches any of the fish which in this act are classified as 'game fish,' or who shall remove or cause to be removed the eggs or spawn of any such fish for speculative purposes, for market, or for sale, or who shall sell or offer for sale any of the game fish of this state as in this act defined, or the eggs or spawn therefrom, shall be deemed guilty of a misdemeanor and shall be punished accordingly; provided, however, that this section shall not apply to fish caught in private ponds by the owner thereof, nor to the taking of fish by the state authorities for the purpose of obtaining the eggs for propagation in state fish hatcheries, or by any person who receives a permit from the state fish commission to take eggs for said purposes."

Under the provisions of Section 3713, above, every person who in any way catches any game fish or who shall remove or cause to be removed the eggs or spawn of any such fish for speculative purposes for the market or for sale or who shall sell or offer for sale any game fish, or the eggs or spawn therefrom, is guilty of a misdemeanor. It must be understood, however, this section or provision applies in no way to fish caught in private ponds by the owner thereof nor to the taking of fish by state authorities for the purpose of obtaining the eggs for propagation in state fish hatcheries, or to any person who receives a permit from the fish and game commission to take eggs for said purposes.

Section 3730 of the Revised Codes of Montana, 1935, provides:

"Section 3730. Removal of animals or parts of animals from state unlawful, when. It is hereby declared to be unlawful and a misdemeanor, punishable as hereinafter provided, for any person or persons to ship or take out of the state any of the game or non-game birds, fish, game animals, fur-bearing animals, or the skins of fur-bearing animals, or any parts thereof, which are mentioned in this act whether taken within or coming from without the state, except the same be done in the manner provided for by sections 3730, 3731, and 3732."

Section 3731 of the Revised Codes of Montana, 1935, provides:

"Section 3731. Permit to resident to ship animals or parts of animals from state. Any resident of this state who desires to ship out of the state any game animals, game or non-game birds, fish, fur-bearing animals, or the skins of fur-bearing animals, or parts thereof, legally taken or killed in the state during the open season therefor, or coming from without the state, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and consignor, destination and number and kind of game or non-game birds, game animals, fish, fur-bearing animals, or the skins from fur-bearing or parts thereof, that is to be shipped and said permit shall be presented to the transportation company with consignment."

Section 3732, Revised Codes of Montana, 1935, has no application to the question propounded here, as it has reference to permits of non-residents to ship animals or parts of animals from the state.

Under the provisions of Section 3730, Revised Codes of Montana, 1935, it is unlawful to ship or take out of the state fish, whether taken within or coming from without the state, except that the same be done in the manner provided for under the provisions of Section 3731, Revised Codes of Montana, 1935. This section provides, among other things, any resident of this state who desires to ship out of the state any fish legally taken or killed in the state during the open season therefor shall first secure a permit from the State Fish and Game Warden so to do.

It would appear Section 3731, Revised Codes of Montana, 1935, concerns the fisherman and the hunter who legally takes and/or kills fish and game during the open season and not the owner of a private artificial lake or fish pond conducting a commercial or business enterprise.

Therefore, it is my opinion the owner of an artificial lake or pond who procures a license for the operation thereof from the State Fish and Game Commission, gives bond to the state, and meets all other requirements of Section 3695, Revised Codes of Montana, 1935, is not required—under the provisions of Section 3730, 3731 or 3732, Revised Codes of Montana, 1935—to secure a permit from the State Fish and Game Commission to ship his fish taken from said lake or pond out of the state.

Sincerely yours,

JOHN W. BONNER
Attorney General